

NOMINATION OF ZOË E. BAIRD

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS

FIRST SESSION

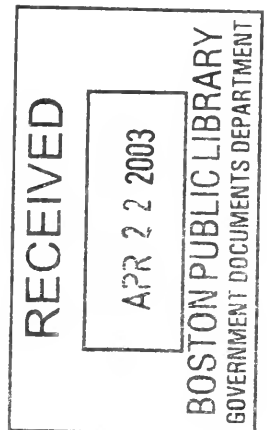
ON THE NOMINATION OF

ZOË E. BAIRD, OF CONNECTICUT, TO BE ATTORNEY GENERAL
OF THE UNITED STATES

JANUARY 19 AND 21, 1993

Serial No. J-103-1

Printed for the use of the Committee on the Judiciary



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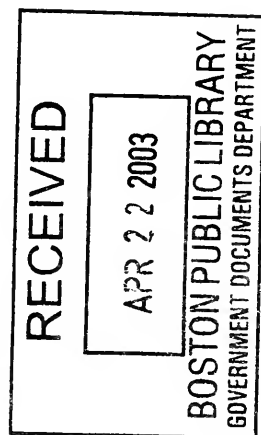
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NOMINATION OF ZOË E. BAIRD

TUESDAY, JANUARY 19, 1993

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:20 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee), presiding.

Also present: Senators Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Feinstein, Moseley-Braun, Hatch, Thurmond, Simpson, Grassley, Specter, Brown, Cohen, and Pressler.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. The hearing will come to order.

Prior to beginning, a few housekeeping matters, if I may. I apologize to my colleague of the House and the Senate for this delay.

First of all, so all the photographers do not revolt and hang me in effigy, because I am apparently the only Chair that does not like them sitting between me and the witness when the questioning is going on, I suggest to the photographers that, after we get to the point where Ms. Baird makes her opening statement, if you would all let the waves part here and stay on either side, so she doesn't have to look over your flash to answer our questions.

Second, I want to formally welcome, in his new capacity as ranking member of this committee, Senator Hatch. Senator Hatch and I are old friends and we have discussed this at length. We both know that Strom Thurmond is still chairman of this committee, and I just want to formally acknowledge that.

I also would like to suggest how we will proceed. First, we will have an opening statement, a brief opening statement by me and Senator Hatch, and then we will ask the presenters, three of our colleagues in the Senate, one of our new colleagues, Senator Murray—welcome, Senator—who all wish to speak. And the second most important person on the panel, Rosa DeLauro, Congresswoman from Connecticut who used to be here years ago as a staff member for one of our colleagues.

We will hear from the presenters and then I will swear the witness and we will hear the opening statement from our nominee, and then we will move to questions.

Today, the Judiciary Committee considers the nomination of Zoë Baird to be Attorney General of the United States. With this hearing, we are literally making history. If confirmed, Zoë Baird will be the first woman to serve the Nation as Attorney General.

Moreover, her confirmation is being heard by a committee that welcomes its first two elected women members, and I want to formally welcome the Senator from California and the Senator from Illinois. You have no idea how happy I am you are both on this panel. [Laughter, applause.]

I would also, with less enthusiasm, but no less love and affection, like to welcome my two colleagues with whom I have served and worked for years, Senator Cohen of Maine and Senator Pressler of South Dakota. It is a pleasure to have you all on the committee.

But the fact that we are hearing the first woman nominee for Attorney General of the United States and it is being heard by the first two women ever to serve on this committee, is emblematic of the change that is all around us.

Tomorrow, the country will inaugurate a President who campaigned on the theme of a new direction, of hope for a better future, of faith that government can be responsive to the needs of the American people.

And nowhere is this commitment to these principles more critical than the Office of Attorney General, an office that is unique among the President's Cabinet. The Attorney General is a member of the President's administration, but her allegiance—and it is interesting to say "her allegiance"—her allegiance is not to the President alone. She owes her allegiance first and foremost to the American people.

For the Nation's most senior lawyer, the oath of office, to defend the Constitution and to faithfully execute the laws of the land, takes on special meaning. The Attorney General oversees the enforcement of all criminal and civil laws in this Nation. Because of this authority, the Attorney General serves as the very symbol of justice of the people who believe that freedom of equality and fairness is the promise of America. More than any other Cabinet officer, the Attorney General will determine whether or not this promise is fulfilled.

Nowhere, in my view, is change more necessary than at the Department of Justice, and I do not mean that as a reflection of the present Attorney General, who I thought was a fine Attorney General and, when working with him, I found him to be forthright and completely dedicated to his task.

But the country is looking to a Department of Justice and an Attorney General for leadership and action. In my view—and all the members of this committee have slightly different agendas and priorities, as to what we think should be the priorities of the Attorney General—but in my view, the passage of comprehensive anticrime legislation, including an attempt to deal with the Brady bill, in response to the scourge of violence in our streets, neighborhoods, and homes, is absolutely essential; to ensure a vigorous and fair enforcement of the Federal criminal laws, including those aimed at white collar criminals and environmental criminals, as well as crimes of violence; to enforce our Federal laws against discrimination and protecting the civil rights of all Americans, and to guarantee that all Department of Justice personnel operate in a non-partisan role to the best of their ability.

In electing a new President, the country has expressed its emphatic desire to break the old patterns of partisan bickering and

gridlock. We can waste no more time in addressing the needs of America, some of which I have mentioned and many of which I have not.

The new administration and the new Congress must work together to fulfill our joint responsibilities, for I think the American people are not going to settle for anything less than that.

This hearing gives us an opportunity to discuss these goals with the President's nominee, Zoë Baird, who enjoys a reputation that recommends her for this office, particularly at this time. She is a skilled manager, known for her ability to build consensus where there is conflict. She brings a multifaceted perspective to the job. Having worked in government, in the private sector, and in industry, she is known for her willingness to look at creative new approaches to solve problems and to improve the current methods of operation.

These skills can be put to good use in the Department of Justice. In particular, I will ask Ms. Baird about her plans to work with Congress to enact a comprehensive plan to fight crime, on how the Federal Government can best coordinate with and support local law enforcement in this effort.

I have been favorably impressed with Ms. Baird's interest in and faculty for addressing these issues. She told me that her meeting with representatives of the Nation's law enforcement groups were among her first efforts, as the designee of the President of the United States, which says a lot to me in terms of how much she believes it is necessary to work with local law enforcement. The Congress, the administration, and law enforcement must work together.

I will also ask Ms. Baird for her leadership in securing passage of laws dealing with violence against women in America. I have discussed that with her, told her how important it is to me, and I am anxious to hear her perspective.

I will also, from my own perspective, speak with Ms. Baird about the vigorous enforcement of civil rights legislation that is on the books and, in my view, is not paid attention to often enough, and there are many other things that will be raised.

But in the interest of time, I believe it is particularly appropriate, as we begin this historic hearing, to declare that enactment of legislation to deal with violence in America should be and must be a top priority for this administration and the Attorney General.

Finally, I will at the outset, as I have told Ms. Baird, raise with her a matter that she initially raised with me as far back as January 5, and it recently has been the focus of much concern in the press and, I might add, among our colleagues and our constituents, and the country has a right to hear her explanation. She deserves an opportunity to explain the circumstances under which Ms. Baird hired two individuals, in violation of the U.S. immigration law.

This is a matter that I personally, as Ms. Baird knows, view most seriously, as indicated from the first time she told me about it. I do not share the attitude that has been expressed by some in the press that this is a technical violation of law, a violation that is unimportant, because, as I have heard in the press and listened on television, everybody does it. Everybody does not do it, it is not

technical, and I think we are entitled to and the American people are entitled to an explanation.

The laws of the United States apply to everyone. The public needs to know that Government officials and the Attorney General, above all, are not above the law. This committee has conducted its own thorough investigation of this matter. We have interviewed personally all the relevant persons.

Ms. Baird has, in my view, been cooperative in this effort with us, and from the beginning has been forthright with me about the circumstances surrounding the hiring of these two individuals. Ms. Baird, in my view, has an otherwise outstanding record, and it is her record as a whole that I believe this committee should look to, but we cannot overlook the circumstances that relate to the hiring of these two individuals.

I might point out at this moment, in terms of the scheduling, it is unlikely that we are going to finish our hearing today. It is unlikely that we will be able to finish Ms. Baird's testimony, along with the witnesses that have chosen to testify. Before the day is over, for my friends in the press, we will announce when we will reconvene.

My expectation, after consulting with my colleagues, is that we will probably go until about 4 o'clock today. We will break at 12 o'clock for 1 hour, for lunch. We will then either reconvene on Thursday or, in my view, on Monday, but not on Friday. I want to reconvene when we know we are going to finish, but that decision we can make based on the progress and with the consultation and the input of my friend from Utah.

So, Ms. Baird, I realize this is, as I said to you in a slightly different context, this is big league baseball. This is not something anyone readily welcomes under any circumstances. It is part of the process. It is our way of letting the American people and us know you, know what you think, know what you are about and know who the President has nominated for such an important job.

I compliment you on the confidence the President has shown in you, and it is truly a historic moment. I welcome you to the committee and I look favorably toward discussing with you the issues that I have raised, along with the issues my colleagues will raise at the time.

I would also point out, before I yield to my colleague, several of our colleagues on this committee have other dual responsibilities. We all have dual responsibilities and there are other confirmation hearings going on and other committee meetings that are going to be on, voting on those people who will be before the other committees.

Our distinguished colleague from California I know has to be at another hearing for a few moments, I believe to introduce someone at those hearings. But if we see our colleagues, Ms. Baird, getting up and coming back, it is not because of their lack of interest. It is because of other responsibilities on other committees that they have.

As Attorney General, you will be very accustomed to testifying here and seeing Senators get up and leave in the middle of your testimony and come back just as you think it is all over. And I

know that Senator Cohen has a similar responsibility and a few others will have to be leaving and coming back.

Now, with that, let me yield to my colleague from Utah, and then we will begin.

STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Senator Biden.

I want to welcome the new members to the committee. This is a wonderful committee to be on, as contentious as it sometimes is. It is a very interesting committee, and I welcome all of you to the committee and I believe that you will add a great deal to it. And I want to welcome Attorney General-designate Baird and her family to the committee, as well.

This is a historic appointment, and if this is big league baseball, you are one of the big league homerun hitters and we expect a great deal from you, as you serve in this position. I congratulate you, Ms. Baird, on your accomplishments and on your selection for this position, and I look forward to working with the nominee after her confirmation to address the various law enforcement issues that affect the people of my home State of Utah and, of course, the Nation, as well.

I am particularly concerned that the Federal Government pays greater attention to less urbanized States like Utah in its allocation of crime-fighting assistance. This is a matter I have already discussed with you, and I will pursue the subject further in some of my questioning today.

The speedy enactment of the Religious Freedom Restoration Act is also important, as far as I am concerned, for the people of Utah and the Nation, and I hope to learn the nominee's views on this important matter of religious liberty.

There are, of course, other issues in both the criminal and civil areas of the law of concern to the people of Utah and, of course, the Nation as a whole, and I hope to explore some of them with the nominee during these hearings. We have chatted on a number of occasions and I have appreciated your forthcoming nature and the openness that you have shown.

Ms. Baird has assured me that she will conduct the Department of Justice's business on a nonpartisan basis, and I think that is a great thing.

We are all aware that Ms. Baird has acknowledged employing unauthorized aliens in her household. As the coauthor of landmark child care legislation—and I am happy to see Senator Dodd here today, and we worked very closely together on that—I am acutely aware of the difficulties and the anguish that many parents, including many single parents, face in trying to secure adequate care for their children while they work.

Let me stress, of course, that I do not condone violations of the law. In this instance, Ms. Baird and her husband have acknowledged mishandling the matter, expressed regret and, significantly, have tried to rectify their mistakes, and I think they have acted appropriately in rectifying their mistakes.

Ms. Baird has been extremely forthcoming and cooperated fully with this committee, and I have spoken with her on several occasions concerning this matter, and I have read and studied the ap-

proximately 500-page FBI report. Ms. Baird has taken appropriate steps to meet her legal obligations, and I am satisfied that this episode should not disqualify a well-qualified and talented individual such as Ms. Baird from public service.

Ms. Baird has distinguished herself in the private sector. I believe that her background in the business world will provide a useful perspective for her service as Attorney General. I am also impressed, Ms. Baird, by your commitment to public service and the service to your community. I recognize that you have spent a lot of time giving service to your community.

Finally, let me tell my friend Chairman Biden how much I look forward to working with him in the Congress, as well as my other colleagues on this committee. As I said, I also welcome the other four members of the committee on both sides of the aisle. Each of them brings unique abilities and experiences to the tasks of the committee, so I look forward to working with all of them.

If the chairman will indulge me for just one more minute: Few people become legends in their own time, and we have such a living legend on the committee. I am speaking, of course, of our own dear colleague, Senator Strom Thurmond of South Carolina, who recently celebrated his 90th birthday.

At a time in his life when other people would have looked forward to retirement, Senator Thurmond embarked on a new phase of his career as U.S. Senator. Nearly 40 years later, Strom Thurmond still remains a Senator's Senator.

And I cannot refrain from noting that, prior to his Senate service, when many people in this room were not even born, his public career had already included a run for the Presidency. This undoubtedly set something of an example for present members of this committee, three of whom have also made such bids, somewhat more recently.

The CHAIRMAN. Equally as successfully. [Laughter.]

Senator HATCH. But let the record show only Senator Thurmond received votes in the electoral college. [Laughter.]

As he assumes the ranking position on the Armed Services Committee, I wanted to take this opportunity to express my love, respect, admiration, and care for my friend from South Carolina.

This is a great committee. It is a pleasure and a privilege to serve on this committee. We have some of the most important nominations in this country, and we take a great deal of pride and a great deal of care and sometimes a great deal of time to look at these nominees.

In this case, I want to compliment President-elect Clinton for his selection of you, Ms. Baird, for Attorney General of the United States. In our conversations, I have to say that you have really come through as a person that I think deserves the right and the honor of serving this country, and I have absolutely no doubt in my mind that you will be a great Attorney General and that you will be able to serve this country with honor and distinction, and with care and compassion and regard for the rights of the American people. And I have no doubt in my mind that you will take this job seriously, as you have taken every job that you have had since you graduated from Boalt Hall a number of years ago.

So we are proud to have you here, we welcome you, and I look forward to working with you as Attorney General of the United States.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I say to my colleague from Utah, not only is Senator Thurmond a living legend in our time, but he will be a legend in my grandchildren's lifetime. [Laughter.]

Welcome, Senator Dodd. We will now go to the presenters, and the senior member of the panel is Senator Dodd. It is a pleasure to have you here, Chris. Then we will go in order of seniority, as we tend to do things here, which means that the House Member, Rosa, you are going to be last.

Senator Dodd.

STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. Thank you very much, Mr. Chairman and members of the committee. It is a pleasure to be before you this morning and to join in the presentation of a constituent as the President-elect's nominee to be the Attorney General of the United States.

Mr. Chairman and Senator Hatch, let me echo your own comments. A little more than 24 hours from now, we will once again peacefully transfer power in this country, demonstrating to ourselves and to the world that we are a nation of laws. Similarly, with this hearing, the Judiciary Committee will also be making history. Members of this committee will be taking testimony from the first woman to be nominated to serve as the Attorney General of the United States.

So I am very pleased to be joining my colleague from Connecticut, Senator Lieberman, my colleague from the House, Rosa DeLauro, who I had the wonderful privilege of working with for so many years, and our new colleague Senator Murray, in presenting Zoë Baird as the President-elect's nominee.

This is a fine candidate, and as you will discover very quickly when she makes her opening remarks and responds to your questions, a very forthright, direct, honest person.

As you know, Zoë Baird has enjoyed a distinguished legal career and has achieved much of her success in our home State of Connecticut. Her association with our State dates back to her service with the legal staff of General Electric Corp. After skillful management of that company's legal department, she went on to become the first female general counsel in history of the Aetna Insurance Co. which is based, as you all know, in Hartford, CT. As Aetna's top attorney, she reorganized the 120-person law department and helped to make it far more cost-efficient and effective.

Although I have mentioned Ms. Baird's outstanding managerial ability, that is only part of her many talents. Indeed, everyone who has worked closely with Ms. Baird describes her—and I quote them—"as brilliant, innovative and tenacious." From her first mentor in the Carter White House, Lloyd Cutler, who many of you on this committee know well, to the chief executive officer of Aetna, Ronald Compton, her reviews have been stellar.

What I find most impressive about Ms. Baird's career is that despite her rapid rise through the ranks of the legal profession, she has never forgotten those members, particularly in our community of Connecticut where she has lived over these past years, who are less successful and less fortunate. That commitment to community is demonstrated by the time and effort she has dedicated to public service.

During the past 7 years, Ms. Baird has served on the board of directors of the Friends of Legal Services of South Central Connecticut, which helps provide legal services to the poor; similarly, through her work with Science Park Development Corp. in New Haven, she has helped improve one of that city's poorest communities.

Clearly, members of the committee, Ms. Baird has impressive qualifications. I know that you are anxious to explore these qualifications in greater detail, so I will not take much more of your time here this morning. But I would like to note that, as is to be expected, some questions have been raised about Ms. Baird's positions on various issues and other matters which have already been addressed by the chairman and the ranking minority member here this morning.

Certainly, this distinguished committee must explore those issues; the American public would expect nothing less. Although she will soon make her statement, let me just say that Zoë Baird welcomes your questions. She knows the enormous challenges facing the chief law enforcement official of this Nation, and she wants to face those challenges with the full support of the American people.

Indeed, in an article she wrote a number of years ago, she stated that the ultimate client of the Attorney General—and I quote her—“must be the people of the United States.”

In closing, let me thank all of you for allowing us to appear before you this morning to present this fine nominee. I also compliment President-elect Clinton for his choice, and I compliment Ms. Baird for accepting the challenge that she is about to assume as the Attorney General of the United States.

I urge you to question her thoroughly and to move as expeditiously as possible.

Mr. Chairman, I thank you.

The CHAIRMAN. Thank you very much, Senator.
Senator Lieberman.

STATEMENT OF HON. JOSEPH I. LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thank you, Mr. Chairman, Senator Hatch, and members of the committee.

I am very happy to join my colleagues, Senator Dodd, Senator Murray, and Congresswoman DeLauro in introducing Attorney General-designate Zoë Baird to this committee this morning.

I must say that I am extremely proud that America's first woman Attorney General is going to come from Connecticut, indeed, from my own home town of New Haven, and if I may say so personally beyond that, very proud that Zoë and her husband Paul are dear friends of my wife and mine.

I want to add for the sake of history and a little chauvinism that, when confirmed, Zoë will be our Nation's third Attorney General to come from the great State of Connecticut.

Let me say at the outset that I have no doubt that Zoë Baird has what it takes to be not just the first woman Attorney General, but one of the finest Attorneys General in our history. She has had a distinguished legal career spanning government, private legal practice, and business. She believes in the law. She is a student of the law in the best sense. She can be tough when toughness is needed, understanding when understanding is required. She will be a strong advocate for the administration, for the people of the United States, and most of all, for the law as an expression of our best values and hopes for an orderly and fair society.

As a resident of New Haven, let me tell you that Zoë knows what it is to live with the fear of street crime. She and I have often talked about the way crime and the fear of crime diminishes all of our lives. And we have spoken of the particular vulnerability to crime that women in America feel, as well as the sense of anger so many of our citizens share when crimes are not solved and when criminals do not receive their just punishment.

Mr. Chairman, Senator Hatch, I have no doubt that Zoë Baird will bring not just her considerable legal abilities to this position, but her personal outrage to bear on the criminals who terrorize our streets. In short, she will be tough on crime.

With Zoë Baird as Attorney General, I also look forward, particularly from my perspective as a former State attorney general, to a renaissance in the Department's enforcement of its affirmative responsibilities, including environmental, consumer, antitrust, and civil rights. Our Nation obviously depends on a Justice Department that will bring the worst polluters to heel, that will fight for fair, free, and full competition to benefit America's consumers, and that will enforce the civil rights laws that help us to ensure that every person in our country can succeed if they work hard.

I know how much the State attorneys general will appreciate the help of a vigorous Department of Justice in each of these areas.

Mr. Chairman, Zoë Baird will also bring to the U.S. Attorney General's Office a very important background in management, and a willingness to take a fresh look at new ideas that must be part of good management in government. For too long, as an example, we have often approached our crime problems by layering additional programs and responsibilities on the Department of Justice. It is time to reinvent the Justice Department, to examine its structure and its programs, to determine whether we are getting the best results for our investment in this Department.

I have great confidence that Zoë's management experience and her intellectual strength give her the tools to carry out this critical and reinvigorating task.

Mr. Chairman, Senator Hatch, members of the committee, I have known Zoë Baird for almost a decade now. Because of her intelligence, wisdom, and personality, her star has risen quickly. Let me just quote from one of her former employers, the CEO of General Electric, Jack Welch, who said,

Zoë Baird is a terrific person who did an outstanding job in every assignment she had. She is very smart. She is a very quick study, and she is a person of the highest integrity.

My colleagues, people I have worked with here in the Senate for 4 years, I come before you on behalf of this nominee to say to you personally that I trust her; I trust not just her competence; I trust her character. And I am confident that you will be as impressed with her as I consistently have been over the years and will confirm her nomination as our next Attorney General.

Mr. Chairman, I thank you, Senator Hatch, and all the members of the committee for your characteristic fairness and courtesy to this nominee.

Finally, I would ask your consent to have printed in the record a compilation of articles and comments about the nominee that have appeared in the press since her nomination was announced.

The CHAIRMAN. Without objection.

Senator LIEBERMAN. Thank you, Mr. Chairman.

[The articles follow:]

[From the Hartford Courant, Dec. 24, 1992]

GOOD ATTORNEY, GOOD POLITICAL CONNECTIONS; CAREER COMBINES LEGAL SKILL, POLITICAL SAVVY

(By David Lightman, Washington Bureau Chief)

WASHINGTON.—For Hartford lawyer Zoë Baird, being named attorney general is another logical milestone in what's been a professional life on America's fastest legal tracks.

"She's a wonderful combination of public and private experience," said Rep. Rosa L. DeLauro, D-3rd District, a friend and New Haven neighbor.

Baird, 40, is senior vice president and general counsel at Aetna Life & Casualty Co. As the insurance giant's top lawyer, she supervises a legal staff of 120, mapping strategy and advising top company officials.

She is also "a very senior adviser," said company spokesman John Hawkins. "The chairman relies on her general good judgment."

But Baird is also known in Connecticut and national circles as a well connected political player.

Throughout her life, she has combined politics and law to gain the national reputation that brought her to President-elect Clinton's attention. She and her husband, Yale Law School Professor Paul Gewirtz, are friends of Clinton's and are expected to spend part of the New Year's holiday with the president-elect and Hillary Clinton.

Baird is also a protégé of some of the country's top legal powerhitters, such as Lloyd N. Cutler, President Carter's White House counsel, and Warren M. Christopher, Clinton's transition director and choice for secretary of state.

A native of Brooklyn, N.Y., Aetna's first female general counsel is the daughter of a union official and a jewelry designer. Earlier this year, she told *The American Lawyer* journal, "My parents were very active in politics. * * * I grew up in a home where there was a lot of vibrant dinner conversation."

She grew up near Seattle and went to the University of California at Berkeley, graduating with highest honors in a double major of communication and public policy and political science. She went on to graduate from the university's Boalt School of Law in 1977.

She and her family live in New Haven, around the corner from DeLauro and her husband, Clinton pollster Stanley Greenberg.

The couples are good friends. They plan to spend Christmas Eve together and enjoy dancing to rock 'n' roll and watching political movies such as "The Manchurian Candidate" and "Advise and Consent."

Baird's first taste of bigtime politics came soon after graduation, when she worked at the Justice Department's Office of Legal Counsel in Washington.

The office is known as a "good place to cut your teeth" in Washington, a place where young lawyers can make political contacts that may serve them well, said

William B. Bonvillian, a longtime friend of Gewirtz's who is chief counsel and legislative director for Sen. Joseph I. Lieberman, D-Conn.

It is also a place for lawyers to learn about government because it is the office that advises the attorney general on legal matters.

According to *The American Lawyer*, Baird came to Cutler's attention there, and he asked her to join his legal team. She spent eight months in the administration, helping advise President Carter on matters such as the legal aspects of dealing with the Iran hostage crisis.

That experience apparently helped convince Clinton she easily could fit into the White House; one of her next jobs helped convince an important Clinton aide of the same thing.

Baird joined the Washington office of O'Melveny & Myers, where Christopher was managing partner, and moved to Connecticut in the early 1980s after marrying Gewirtz. The couple has a son, Julian.

Baird recalled for *The American Lawyer* how she was introduced to General Electric Co. chairman and chief executive officer Jack Welch, who urged her to come to the Fairfield-based firm to help reorganize the legal department.

Baird served GE as counselor and staff executive and stayed until July 1990, when she came to Aetna.

In the ensuing years, she and Gewirtz gained a reputation as one of Connecticut's most high-powered legal and political couples.

Gewirtz is a constitutional scholar who once clerked for former Supreme Court Justice Thurgood Marshall. He has written extensively for newspapers and magazines on a variety of subjects and is close to Connecticut Attorney General Richard Blumenthal.

Baird became active in the campaigns of former Rep. Bruce A. Morrison, D-3rd District. Morrison, now a Hamden attorney, recalled how she helped organize a 1986 fundraiser for him in Stamford featuring the singing group Peter, Paul and Mary.

"She's not only a politically savvy Democrat," he said, "but a good lawyer."

Baird quietly became involved with top Clinton supporters early in 1992. Clinton had backing early from many of the state's most prominent Democrats, and Baird was on the steering committee that put together a February state fundraiser.

"You may not see her at every event," said John F. Droney Jr., who ran Clinton's Connecticut campaign, "but she was an important early supporter."

She was also making professional waves at Aetna. Shortly after she arrived there, the company announced a major reorganization, and ever since has been struggling to thrive in a turbulent economy.

Its insurance divisions—commercial, employees benefits and personal financial security—became 15 "strategic business units." They were changed so each product line would become its own "profit center," so it could stand or fall on its own merits.

Baird was charged with revamping the legal department. Her changes meant that there would be eight fullservice legal teams for the 15 units; some units were fairly small and did not need their own separate teams.

Baird also changed how lawyers were paid, basing pay less on seniority and more on merit.

Included in her reorganization was a broad interunit legal group that was aimed at what Baird called "resolving business problems." She has used a Massachusetts case as an example.

Aetna had tried to withdraw from the auto insurance business in Massachusetts, but the state wanted the company to pay millions of dollars to its insurance pool for highrisk drivers or lose its license to sell any products in the state.

Baird oversaw the effort to fight the regulations. Aetna sued the state in federal court. The state reduced the amount Aetna would have to pay, the lawsuit was dropped and Aetna stopped selling auto policies in the state.

Outside Aetna, Baird got national attention when she studied lawyers' fee arrangements for the American Bar Association. "She's really out front on that issue," said John H. Filer, former Aetna chairman and chief executive officer and now a Hartford attorney. "What she says makes a lot of sense."

She had urged ending hourly rates, telling *Business Week*, "It doesn't make any sense. Lawyers sell their time but that's not the product."

Clinton had met Baird during the campaign, and she went on the short list of potential Connecticut appointees.

She was one of six state residents invited to the economic summit in Little Rock, Ark., this month, but it was not until this week she suddenly emerged as a front-runner for a key Washington job.

[From Reuters, Limited, Dec. 24, 1992]

BAIRD A TRAILBLAZER AND RISING STAR IN LAW PROFESSION

(By Gail Appleson, Law Correspondent)

NEW YORK.—Zoë Baird is a legal trailblazer who has advised a president, run two huge corporate legal departments and even hammered out an antitrust settlement in a restroom.

Now at age 40 she is poised to become the first woman to be U.S. attorney general, the nation's top lawyer.

"She is a rising star," said Sandy D'Alemberte, president of the American Bar Association, the world's largest legal group. "In the legal profession, she is regarded as very bright and very innovative."

In her late twenties, Baird was named a White House lawyer to then-president Jimmy Carter; at 32 she was made partner at the prestigious law firm O'Melveny and Myers; two years later she was named to manage General Electric Co.'s huge legal department and three years after that she became general counsel at Aetna Life & Casualty Co.

While running the insurance giant's 120-lawyer department with annual expenditures of more than \$90 million, Baird has won praise for her efforts aimed at cutting corporate legal costs.

She has also been an advocate for the poor, taking a strong stand that corporations and their lawyers should be donating legal services to those who cannot pay, said D'Alemberte, who practices law in Miami.

"Her view is not a selfish corporate one," said D'Alemberte. "I have always heard a larger message from Zoë about providing legal services to all Americans."

Baird, who grew up near Seattle and now lives in New Haven, Conn., says her parents introduced her to politics at an early age, particularly since her father was a union official with the American Radio Association.

She majored in political science and communications at the University of California, Berkeley, and when she was a sophomore took a break to work on the congressional campaign of Democratic Rep. Brock Adams.

After getting her law degree in 1977, she clerked for a federal judge, then joined the Department of Justice's Office of Legal Counsel that prepares the attorney general's legal options, resolves disputes between Cabinet members and gives legal advice to the White House.

In 1980, Carter's counsel Lloyd Cutler asked her to join his five-lawyer office in the White House. During her eight months at 1600 Pennsylvania Ave., she advised the president on constitutional questions including the legal implications of the actions he might take in the Iranian hostage crisis.

After Carter left office she went to O'Melveny & Meyers.

She left the firm shortly after marrying Yale University constitutional law professor Paul Gewirtz, joining General Electric in 1986.

This was one year after GE pleaded guilty to 108 counts of billing fraud and paid \$1.84 million in fines and refunds. While at GE she was responsible for running the company's new compliance program.

"Zoë Baird is a terrific person who did an outstanding job in every assignment she had," said John Welch Jr., GE's chairman and chief executive. "She's very smart, a very quick study and a person of the highest integrity."

She joined Aetna in 1990 and was soon named the lead negotiator in an antitrust fight waged against Aetna and six other insurers. Although she had little insurance experience and the case had dragged on for three years, Baird settled the case in three months.

According to American Lawyer magazine, Baird had spotted a women lawyer for one of the plaintiffs, the Texas State Board of Insurance, at a different court hearing.

There was nowhere to talk, so Baird suggested they discuss a settlement in the women's restroom, and the case was later resolved.

[From the Associated Press, Dec. 25, 1992]

ATTORNEY GENERAL DESIGNEE: A MIX OF LEGAL SKILL, POLITICAL SAVVY

(By Thomas Becher, Associated Press Writer)

HARTFORD, CT.—Though she has no experience in law enforcement, Hartford lawyer Zoë Baird has combined legal skill with political savvy to forge a national reputation.

As general counsel at Aetna Life & Casualty Co., Baird is considered among the top women in business. As a former Carter White House aide and recent friend of President-elect Clinton and his wife Hillary, she is well connected.

Baird, 40, was named Thursday by Clinton to run the Justice Department as the first female attorney general.

"She has proven herself in an incredibly tough environment, in an incredibly tough business," said Rep. Barbara Kennelly, D-Conn. "She is as intelligent as you can get, as able as you can get."

Baird was an informal policy adviser to Clinton during the campaign, primarily on health care issues, and attended his recent economic summit. A native of Brooklyn, N.Y., she received her law degree from the University of California at Berkeley.

In June, Business Week named her one of the 50 top women in business, describing her as a "strategic activist" who is "party to all major policy decisions at Aetna and is shaping the insurer's stance on public issues such as health care."

Baird has been senior vice president and general counsel at Aetna for two years. She supervises a legal staff of 120 and advises top company officials.

"The chairman relies on her general good judgment," said Aetna spokesman John Hawkins.

Shortly after Baird arrived at Aetna, the insurer announced a major reorganization, and has been struggling to thrive amid a sagging economy and mounting losses from real estate investments. Baird has been in charge of revamping Aetna's legal department.

Before joining Aetna, Baird was a senior attorney at Fairfield-based General Electric Co.

She told Working Woman magazine in an article published this month that top GE executives were "transforming the values that senior managers are looking for in their employees." That, she hoped, would "create more opportunities for women."

GE Chairman John F. Welch Jr. called Baird "a terrific person who did an outstanding job in every assignment she had at GE."

Baird is a protegee of Lloyd N. Cutler, President Carter's White House counsel, and Warren M. Christopher, Clinton's transition director and secretary of state-designate.

The daughter of a union official and a jewelry designer, Baird grew up in Seattle. Soon after graduating from college, she worked at the Justice Department's Office of Legal Counsel in Washington. The office is a place where young lawyers can make political contacts, said William B. Bonvillian, chief counsel and legislative director for Sen. Joseph Lieberman, D-Conn.

According to The American Lawyer, Baird came to Cutler's attention while working at the legal counsel office. She spent eight months in the Carter administration.

Baird joined the Washington office of O'Melveny & Myers, where Christopher was managing partner, and moved to Connecticut in the early 1980s after marrying Paul Gewirtz, a professor at Yale Law School. The couple has a 3-year-old son, Julian.

[From the Atlanta Journal and Constitution, Dec. 25, 1992]

A FAST TRACK TO THE TOP FOR ZOË BAIRD AT 40, LAWYER READY TO BE 1ST WOMAN ATTORNEY GENERAL

(By Hartford Courant)

WASHINGTON.—For lawyer Zoë Baird, being named attorney general is another logical milestone in a professional life on one of America's fastest legal tracks.

Ms. Baird, 40, has been senior vice president and general counsel at Aetna Life & Casualty Co. in Hartford, Conn., for 2½ years. As the insurance giant's top lawyer and "very senior advisor," she supervises a legal staff of 120, mapping strategy and advising company officials.

But Ms. Baird also is known in national circles as a well-connected political player.

Throughout her life, she has combined politics and law to gain the reputation that brought her to President-elect Bill Clinton's attention. She and her husband, Yale Law School professor Paul Gewirtz, are friends of the Clintons and are expected to spend part of the New Year's holiday with the president-elect and his wife, Hillary.

Ms. Baird also is a protegee of some of the country's top legal power-hitters, including Lloyd Cutler, President Jimmy Carter's White House counsel, and Warren Christopher, Mr. Clinton's transition director and choice for secretary of state.

A native of New York City, Ms. Baird is the daughter of a union official and a jewelry designer. She grew up near Seattle and went to the University of California at Berkeley, graduating with the highest honors in a double major of communications and public policy-political science. She went on to graduate from the university's Boalt School of Law in 1977.

Her first taste of big-time politics came soon after graduation, when she worked at the Justice Department's Office of Legal Counsel in Washington. It is a place for lawyers to learn about government because it is the office that advises the attorney general on legal matters.

The office is known as a "good place to cut your teeth" in Washington, a place where young lawyers can make the kinds of political contacts that may serve them well, said William Bonvillian, a longtime friend of Mr. Gewirtz's who is chief counsel and legislative director for Sen. Joseph Lieberman (D-Conn.).

Ms. Baird, according to *The American Lawyer* magazine, came to Cutler's attention there, and he asked her to join his legal team. She spent eight months in the administration, helping to advise Mr. Carter on matters such as the legal aspects of dealing with the hostage crisis.

Ms. Baird joined the Washington office of O'Melveny & Myers, where Mr. Christopher was managing partner, and moved to Connecticut in the early 1980s after marrying Mr. Gewirtz. The couple has a son, Julian, 3.

Ms. Baird served General Electric Co. in Connecticut as a counselor and staff executive, staying until July 1990, when she joined Aetna.

She quietly became involved with top Clinton supporters early this year. Mr. Clinton had early support from many of Connecticut's most prominent Democrats, and Ms. Baird was on the steering committee that puts together a state fund-raiser in February.

In June, *Business Week* magazine named her one of the 50 top women in business, describing her as a "strategic activist" who is "party to all major policy decisions at Aetna and is shaping the insurer's stance on public issues such as health care."

Outside Aetna, Ms. Baird won national attention when she studied lawyers' fee arrangements for the American Bar Association. "She's really out front on that issue," said former Aetna Chairman John Filer. "What she says makes a lot of sense."

She had urged ending hourly rates, telling *Business Week*, "It doesn't make any sense. Lawyers sell their time, but that's not the product."

Mr. Clinton had met Ms. Baird during the campaign, and she went on the list of potential appointees.

She was invited to the recent economic summit in Little Rock, Ark., but it was not until earlier this week that she suddenly emerged as the front-runner for attorney general. Color photo: (Appeared on A/01 with reference to A/10 story) mug of Zoë Baird Chart: (Appeared on A/01 with reference to A/10 story). Legal eagle Zoë Baird is a well-connected political player. Being named attorney general by President-elect Bill Clinton is the latest milepost in what has been a professional career in America's fast lane. Throughout her life, she has combined politics and law to gain a national reputation. She and her husband, Paul Gewirtz, are friends of the Clintons and are expected to spend the New Year's holiday with them.

[From the Hartford Courant, Dec. 25, 1992]

BAIRD CONFIRMATION CONSIDERED LIKELY; BAIRD UNLIKELY TO BE OPPOSED BY SENATE

(By David Lightman, Diane Levick, and Matthew Daly; Courant Staff Writers)

WASHINGTON.—Attorney General-designate Zoë Baird faces a Senate grilling next month on criminal law—where she has no record and no known positions—but members and analysts said Thursday she should have little trouble being confirmed.

President-elect Clinton Thursday officially nominated Baird, currently senior vice president and general counsel at Aetna Life & Casualty Co., to become the nation's

first female attorney general and thus the first woman ever to be part of what is considered a president's "inner Cabinet."

"She is tough, tenacious and gifted," Clinton told a Little Rock, Ark., press conference.

Baird spoke briefly, recalling how her first job as a practicing lawyer was at the Justice Department, "and I've never forgotten how proud I feel each day as I went to work knowing that my only mission was to do my best for my country.

"Again," she said, "that mission will guide me."

The Justice Department, which has about 93,000 employees, is the chief counsel for the U.S. government. Agencies under Baird will include the solicitor general, who represents the government before the Supreme Court; the FBI; a civil rights division; and a criminal division.

Also under its wing are the Drug Enforcement Administration, the Federal Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, U.S. attorneys and the Antitrust Division.

Baird will probably find little of her expertise in healthcare law directly relevant to her new job, since Justice has little to do with health care, which largely falls under the auspices of the Department of Health and Human Services.

But Baird, a top member of the Aetna defense team in a major insurance anti-trust case, will find herself on the opposite side of that case, as the solicitor general will oppose the insurers when the U.S. Supreme Court hears the matter next year.

All this could be discussed at hearings that Senate Judiciary Committee Chairman Joseph R. Biden Jr., D-Del., said Thursday he will schedule before Clinton is sworn into office Jan. 20. The full Senate will probably take up the nomination soon afterward. When there is little controversy, such matters are usually complete by the end of January.

No one interviewed Thursday foresaw anything to stall the choice of the 40-year old New Haven resident, who won praise from members of both parties.

Sen. Orrin G. Hatch, R-Utah, who as a committee member will play an important role in the confirmation, predicted few problems.

"She looks like an excellent choice," he said. "She's had some very good private [sector] experience, and from all I know, she's a very honorable and decent human being."

Hatch, who was criticized by some women's groups last year after his performance in the confirmation hearings of Supreme Court Justice Clarence Thomas, said he was pleased Clinton had nominated a woman for attorney general, a post that is generally considered one of the four top Cabinet jobs.

"I think that is a fine thing," Hatch said. "I have every confidence she'll do an excellent job—and I intend to help her."

Analysts were not surprised by the quick acceptance for a nominee who only a month ago was sitting in the office of Sen. Joseph I. Lieberman, D-Conn., discussing healthcare reform and seeming unenthusiastic about the idea of trying for a Washington job.

"She called me back the next day," Lieberman said Thursday, "and was concerned she may have seemed too reticent."

But it was only this week that Baird vaulted into prominence. Clinton began looking seriously at her after Judge Patricia M. Wald of the U.S. District Court of Appeals for the District of Columbia Circuit said she did not want the job and frontrunner Brooksley E. Born, a Washington attorney, seemed too controversial. Born was being pushed by women's groups who had criticized Clinton earlier in the week.

"I think the key was how determined Bill Clinton was to name a woman as attorney general," said Guido Calabresi, dean of Yale Law School. "Because if that is what he had in mind, then having someone as talented as Zoë Baird on a list of names . . . was bound to make him say, 'Jeepers, why not her?'"

Experts thought she would be asked the usual tough questions, but could handle them easily.

"Remember, this is a Democratic administration and a Democratic Senate," said Stephen Hess, political analyst at Washington's Brookings Institution, "and she is as qualified as most recent attorneys general."

The toughest inquiries could probe her views on criminal justice at a time when Clinton has been vowing to get tough on crime.

But even here, no one saw much trouble. "She doesn't really have a track record," said former Rep. Bruce A. Morrison, a friend who used to serve on the House Judiciary Committee, "but I cannot see any real problem."

"She's a good lawyer, and she can learn," added Lieberman. "And remember, she can bring in people under her with lots of experience."

Baird is also likely to be asked about her lack of prosecutorial experience, but Connecticut Attorney General Richard Blumenthal, who was U.S. attorney for the state from 1977 to 1981, said that will be a minor issue.

"What I always respected was an attorney general who, especially in criminal cases, gave a lot of credence to recommendations from the field," he said, "and she is a good listener."

Hatch also downplayed her lack of experience as a prosecutor.

"Sometimes, I think the prosecutorial mentality can hurt an attorney general," he said. "People who serve too long in prosecutor areas sometimes lose their compassion."

Baird said Thursday that she would "do everything within my power to be sure that this department will be firm in its prosecution of crime."

Clinton has been trying to portray himself as a different kind of Democrat, and one of his major pitches has involved law and order.

Baird will face several ongoing criminal justice issues. New Haven lawyer William F. Dow III said one of the biggest will be whether to review the effectiveness of federal sentencing guidelines imposed by the Reagan administration in 1987.

Discontent over the guidelines—among prosecutors, defense lawyers and judges—is so strong, the issue is likely to be one of the first to surface, Dow said.

He thought Baird's inexperience may turn out to be an asset.

"One of the good things that happens when people who are inexperienced in certain areas come into it, they bring a fresh perspective," he said.

Ironically, Baird, who has helped defend the insurance industry in a massive antitrust case, will head a federal agency on the opposite side of the legal battle.

Baird has been a leading member of the defense team and a strategist in the case brought against an Aetna subsidiary and other insurers by 19 state attorneys general, said Stephen B. Middlebrook, Aetna senior vice president and executive counsel.

The U.S. Solicitor General's Office, a unit of the Justice Department, will argue against insurers when the case is heard by the U.S. Supreme Court early next year.

The 1988 litigation accuses 32 defendants, mostly insurers, of conspiring to limit in the mid-1980s the number and kind of liability claims that would be covered by policies for businesses and municipalities.

Insurers argue the federal McCarran-Ferguson Act and various legal doctrines protected their activities from antitrust challenges.

Baird may have to recuse herself from matters involving the insurance antitrust case, noted Blumenthal, the state's attorney general. Connecticut is one of the 19 states pressing the case.

"It would not be uncommon for a distinguished lawyer to be on the opposite side and then recuse himself," Blumenthal said.

Baird was also a "critical element" in separate antitrust litigation brought by the state of Texas against insurers, Middlebrook said. Aetna was among eight defendants that settled the case in March 1991 without admitting wrongdoing.

Aetna officials expressed regret at losing her, but delight at her new job. Ronald E. Compton, Aetna chairman and chief executive officer, called Baird "one of a handful of people you go to" for good advice.

While it is always hard to say what may come up during committee hearings, it is difficult now just to predict what the committee will look like.

The members of the Judiciary Committee will not be chosen until early next month. When the committee came under fire during the Thomas confirmation hearings, particularly criticized was its makeup: It consisted of 14 white men.

It is unclear whether any women or minorities will join the panel, which will still be led by Biden.

A number of issues could come up. Among them:

What Morrison called "playing the litmus game." What is her view on abortion? On affirmative action? On civil rights enforcement? On the death penalty?

It is unknown but nevertheless likely that, since she was interviewed by Clinton and his transition team, her views differ little from the those of the president-elect.

Her experience. Baird has been with Aetna since July 1990. Prior to that, she was a counselor and staff executive at General Electric Co., an attorney in the Washington office of O'Melveny and Myers, the firm of Secretary of State designate Warren Christopher, an associate White House counsel under President Carter and an attorney at the Justice Office of Legal Counsel.

The diversity issue. The Baird appointment comes three days after women's groups criticized Clinton for not naming enough women to his Cabinet; there is talk in Washington that he is reaching too far to create a diverse cabinet and sacrificing quality.

But Baird will be supported by Washington's version of an allstar team. She will be strongly pushed by Lieberman, one of Clinton's earliest Senate backers, and Sen. Christopher J. Dodd, D-Conn.

And she has close ties to many who are familiar to the Senate, including Christopher, the transition director as well as Secretary of State designate; William T. Coleman, Jr., secretary of transportation under President Ford; Lloyd N. Cutler, White House counsel under Carter; and Sen. Bock Adams, D-Wash., whom Baird once campaigned for in the Seattle area, where she grew up.

"I expect smooth sailing," said Dodd

[From the New York Times, Dec. 25, 1992]

ABROAD AT HOME; CHALLENGE OF JUSTICE

(By Anthony Lewis)

BOSTON.—The choice of Zoë Baird to be Attorney General is the most inspired stroke of Bill Clinton's Cabinet-making. She is the first woman in the office, which matters. But it matters more that she has the wisdom, the professional respect and the determination needed to take on what may be the most daunting job in government.

The Department of Justice, once so revered, has become a symbol of Americans' loss of faith in government. In the Nixon years it harbored criminality at the top. After a revival in the Ford and Carter Administrations, it has sunk into a mire of politicking and malfeasance.

Thus we have the present Attorney General, William Barr, doing his best to cover up Iraqgate: the scandal of how the Reagan and Bush Administrations financed Saddam Hussein's military buildup until the very eye of his attack on Kuwait. Thus we have the prison service breaking its own rules to punish a prisoner, Brett Kimberlin, because he wanted to tell the world that Dan Quayle had bought marijuana. And still punishing him.

A first step that Zoë Baird will doubtless take, to restore morale in that disheartened agency, is to make clear that politics will stop at the department's door. That and a commitment to end Justice's obsession with secrecy of recent years: unnecessary secrecy in its own affairs and in government generally.

Right now the Supreme Court has before it a case in which Justice successfully prosecuted two corporate officers for receiving unclassified government information that no law or regulation restricted. The case, *McCausland v. U.S.*, is one in which Ms. Baird and her Solicitor General could make an important point by confessing error.

The present Justice Department hierarchy went back on an undertaking to the courts by refusing to let Haitians whom its own officers had identified as probable political refugees consult lawyers about their asylum applications. The Immigration Service is also still barring political radicals from the country, subverting Congress's repeal of that notorious provision of the McCarran-Walter Act.

Crime legislation is another problem that Ms. Baird will have to confront. A crime bill floundered in the last Congress over the Bush Administration's resistance to gun control and its wish to gut the ancient remedy of habeas corpus.

For the last 12 years judicial appointments have been largely controlled by right-wing zealots in the Justice Department and the White House counsel's Office. The Democrats naturally want their turn, but Ms. Baird could do the courts a great service by reducing the level of ideological relentlessness in the search.

One more burning question on which Ms. Baird will quickly have to advise is renewal of the independent counsel statute. President Bush's wholesale pardons of men prosecuted by independent counsel Lawrence E. Walsh in the Iran-contra affair will make the politics of the issue even pricklier.

Many regretted the impending trial of former Secretary of Defense Caspar Weinberger, who after all opposed the folly of trading arms to Iran for American hostages. But pardoning men who were guilty of lying to cover up the affair is another matter.

The pardons really present in acute form the larger challenge facing Zoë Baird; to restore faith in constitutional government. President Bush said the men he pardoned had made no profit and acted out of patriotism. But they violated the Constitution. Until the gravity of that offense is recognized, our system will be in trouble.

It is a great set of challenges for Zoë Baird. But if anyone can meet it, I believe she can. She has the high regard of many lawyers and of the devoted career employ-

ees of the Justice Department. One official there said: "It is a restorative appointment."

The CHAIRMAN. As my colleagues know, it is not at all unusual to have the Senators from the State from which the nominee hails to come and be presenters and introducers, as well as the Congresspersons from that district, but it is somewhat unusual to have someone who has such a transcontinental reach.

We welcome one of our newest Members of the Senate from the State of Washington, Senator Patty Murray, who requested to come and speak on behalf of, and be one of, the presenters of Ms. Baird. Senator.

STATEMENT OF HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Thank you, Mr. Chairman and members of the committee.

I am honored to be here today to escort and support Zoë Baird in her quest for U.S. Attorney General. Much has been said over the last year about those of us who are coming into politics and public life as outsiders, not well-known in the beltway, and I think that I know as well as many what the challenges and obstacles are to those of us who are coming in not so well-known; but I also believe that the message of this last election is that the voters want change, and that means new faces, new voices, and new experiences, the kind that Zoë Baird brings.

Now, as you will hear throughout today, Zoë is well-known in the political and corporate world, but that's not the context in which I know Zoë. As a matter of fact, Zoë and I both grew up in a small town, population 1,000, called Bothell, WA. We are both products of that community. And over the last several weeks, I have heard from many of the people, that we grew up with, who are excited about Zoë's nomination.

In fact, last Friday, I got a letter from someone that I have not seen or heard from since 1968, when I graduated, who sent me a letter, and I would like to share part of it with you.

It says:

I remember Mrs. Garrity, who was our social studies teacher, telling our class while we were in high school that women would someday be empowered in politics. It seemed for us in those days before women's lib to be an unattainable goal. But you did it. You really did it. And now I found out that my sister's friend, Zoë Baird, was nominated by Clinton for Attorney General. She was two years behind us in school. You ladies give hope to women all across the country, especially for those of us in the work force battling that glass ceiling.

Zoë and I are both products of a small community and a great public education system that taught us if you believe in yourself, if you work hard, you can make a difference.

Zoë, I know you are going to make a difference, and I am proud to support you.

Thank you, Mr. Chairman. [Applause.]

The CHAIRMAN. Thank you very much, Senator.

Time will overcome anonymity, I assure you. When I came here, I was 29 years old, and I said the only promise I could make is that I would get older. You will get better known whether you like it or not.

Congresswoman Rosa DeLauro.

Rosa.

**STATEMENT OF HON. ROSA L. DeLAURO, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CONNECTICUT**

Ms. DeLAURO. Thank you, Mr. Chairman, Senator Hatch, members of the committee, it is an honor for me to be here this morning before the Judiciary Committee of the U.S. Senate, and it is an honor for me to be here on this panel, with my colleagues from Connecticut, Senator Dodd, a mentor, Senator Lieberman, and newly elected Senator Murray.

Over the years, some of the most distinguished legal minds in America have sat before this committee as its members have carried out the historic responsibility to advise and consent. And I deeply respect the work of this committee, and that is why I am here today.

I also respect the tradition of excellence that precedes the designates who have occupied this table, and I believe strongly that Zoë Baird will add her name to one of the most respected Attorneys General in this Nation.

I have come with enthusiasm to introduce Zoë Baird. I know her as an exceptional professional, as a person who has deep values and who is committed to the law and individual liberty.

Zoë Baird brings a brilliance to legal discourse and a broad understanding of the law and its impact on social relations. She has a deep commitment to individual rights and to upholding the law. And this is a person who is always probing for the broader meaning and for implications and looking—and really, I say this without any cynicism—always looking for the public good.

But her professional credentials only tell one side of the story. I am here to tell you about a person who is also my neighbor and who is also my very dear friend. It is more than anything this side of Zoë Baird that convinces me that she has the integrity and the personal character to serve this Nation as its top law enforcement official.

Six years ago, Zoë and I met over a cup of coffee at Clark's Dairy in New Haven, CT, and I knew immediately that this was someone who would become a close personal friend, and I recognized in her the kind of personal commitment to people that has always impressed me in others, but is often very hard to find. And no matter how busy Zoë was with her own career, and a demanding career, she made time for her family, for her friends, and for her community.

And over the years, her family, Paul and Julian, and her brother Stacy, we have all shared the holidays together, and I have learned something about her inner strength and about her personal character.

But let me emphasize that this is a committed mother and wife, also a professional, who is honest and who is ethical. She is somebody who wants to do the right thing, and I would be proud, proud indeed, to have a person of her character setting the standards for this country.

When I first heard that President-elect Clinton was considering nominating Zoë Baird as Attorney General, my excitement was for a friend, who was happy for this Nation which would benefit from

her service. But I also reacted with a sober respect for the thinking that went into the decision.

In this appointment, the President-elect turned to a woman with a brilliant, creative legal mind and a reputation for tough-mindedness. He turned to a woman of grace who had shown the way to the top, not just in the law but in the business community as well. And he turned to a person who was committed, deeply and passionately, to the protection and the expansion of individual liberty. And he turned to a good person whose instincts are going to serve her well in this office.

I am very proud that Bill Clinton had the vision to nominate Zoë Baird for Attorney General. I think it says a great deal about the new direction of this country and about Zoë Baird herself, and I am proud to present her today to all of you, and I urge you to confirm her nomination as Attorney General of the United States.

Thank you, really, for the honor of being with you today.

The CHAIRMAN. Thank you, Congresswoman. It is an honor to have anyone support any of us with the enthusiasm that you have and with the integrity that you bring to this table, and we appreciate it.

Ms. Baird, I am going to ask you now to stand and be sworn, and then we will hear your testimony.

Do you swear the testimony you are about to give will be the whole truth and nothing but the truth, so help you, God?

Ms. BAIRD. I do.

TESTIMONY OF ZOË E. BAIRD, OF CONNECTICUT, TO BE ATTORNEY GENERAL OF THE UNITED STATES

The CHAIRMAN. Welcome, Ms. Baird, and the floor is yours for an opening statement of any length or duration that you would like to make.

I thank our colleagues for taking the time to be here.

Ms. BAIRD. Chairman Biden, Senator Hatch, members of the committee—

The CHAIRMAN. Excuse me one moment, Ms. Baird.

Before Senator Thurmond says it, as he says, would you pull the microphone closer? The acoustics in here are not very good.

Ms. BAIRD. I was told not to worry about the mike, that the folks who could turn up the dials would take care of that, but I guess not.

The CHAIRMAN. Well, I think he lied. [Laughter.]

Ms. BAIRD. I apologize.

The CHAIRMAN. You may have to pull that closer. I apologize. I know it is somewhat inconvenient, but thank you.

Ms. BAIRD. Thank you.

It is a great honor to appear before this committee today, as you consider my nomination to serve as Attorney General of the United States.

I first want to thank you, Chairman Biden, and the other members of the committee for the welcome that you have extended to me during the days leading up to this hearing. I am especially mindful of the collective years of experience and commitment that the members of this committee have from both political parties for justice in America.

If confirmed, I look forward to the opportunity to work with all of you to our shared goal of justice for every citizen of the United States.

Please permit me to first introduce my husband, Paul Gewirtz, who teaches constitutional law at Yale University. As you are all very well aware, also—

The CHAIRMAN. Would your husband please stand, so we know who he is? There are so many good-looking guys back there. Welcome.

Ms. BAIRD. As you are all very well aware, we also have a 3-year-old son, but I spared you his presence this morning.

I also want to thank our family members, friends, and colleagues who are here today.

I must give particular thanks to Senator Chris Dodd, Senator Joe Lieberman, Senator Patty Murray, and Representative Rosa DeLauro. They are not only friends, but inspirations to the ideal of public service.

President-elect Bill Clinton has paid me the highest honor by offering me the challenge of leading the Department of Justice and its now 91,000 employees. The name of the Department I will head, if confirmed, states my basic goal in its most simple and noble terms: justice.

The inscription above the entrance to the Supreme Court established our standard: Equal Justice Under Law.

The Justice Department has many critics, but it is a great Department, full of extraordinarily skilled and public spirited people. I hope to bring to them a larger sense of purpose and a clear sense of honor to serve their clients. While there will be partisan issues, it should not be a partisan Department.

The Department's purpose is to use the law to protect the American people and to use the law to enforce the rights of the American people—their civil rights, their rights to economic fairness, and their rights to a cleaner environment and security from crime.

The Department of Justice touches on the work of all other departments, guiding them in the law and defending their actions in court. I want this influence to be used to further the rights of the American people throughout the Federal Government.

As in the period when Robert Kennedy was Attorney General, I want to infuse this department with a new energy and to attract to its ranks the very finest talent this country has to offer. As in the period when Edward Levi was Attorney General, I want the department to be a symbol for this country that we are governed by the rule of law. And I want it to always be seen as a place where the American people think justice is being pursued.

I hope today to have the first of many constructive dialogues with you. As I am sure you will appreciate, since this is a new administration, many of the issues we will raise will require further study. But let me start by first introducing myself to you and sharing some of my life-shaping experiences.

As Senator Murray said, I grew up near Seattle, WA, in a home created by working parents. My father was a labor union official, and my mother raised the family and worked in a union-sponsored retirement home. Their guidance and teachings centered on love of family, interest in public affairs and an opportunity to serve. I did

my undergraduate studies at the University of California at Berkeley, and later studied law at that university's Boalt Hall.

As my career has developed, I have worked in an unusually broad range of legal institutions. After completing a Federal judicial clerkship with the late Judge Albert Wollenberg, I joined the Department of Justice as a lawyer in the Office of Legal Counsel. I then served in the White House as associate counsel to President Carter until his term ended. In 1981, I joined the law firm of O'Melveny & Myers, and became a partner in 1985, working on a wide range of matters involving litigation, negotiation, and counseling.

Following my marriage in June of 1986, I moved to Connecticut and joined General Electric, where I was involved with senior management as a lawyer, with multifaceted responsibilities, including advising on criminal matters. I supervised a broad range of legal projects and participated in the management of GE's large legal department. My role was described as the managing partner.

In 1990, I joined Aetna, initially as vice president and general counsel, and then later as senior vice president and general counsel, where I have served until the present time. As the company's chief legal officer, I have overseen the work of 120 in-house lawyers, as well as a large number of outside counsel. The legal work has been diverse. I have guided management through many difficult legal problems. I have developed a strategic litigation approach for the company, and I organized a basic restructuring of the company's legal arm in order to make the delivery of legal services more effective and efficient.

Throughout my professional career, I have considered broader involvement on behalf of public interest issues an important ingredient of my life. I have handled pro bono matters. For example, when I was at O'Melveny & Myers, I was involved with this body's consideration of the reauthorization of the independent counsel statute. More recently, I organized a new pro bono program at Aetna.

One of my most satisfying involvements was giving life to a non-profit corporation in New Haven, Science Park Development Corp., which is attempting to create economic opportunity for one of New Haven's most depressed communities.

Let me turn back now to the Department of Justice. The challenges and opportunities that that Department faces are many. First, there is the enormous problem of crime. Today, Americans face threats from violent predators on our street corners, sophisticated crime syndicates engaged in drug trafficking, international terrorism and all manner of criminal activity. The Department confronts elaborate criminal schemes not even contemplated 5, 10, and 15 years ago.

As a mother of a 3-year-old, I can particularly appreciate the passion and the anger about the day-to-day terror of crime in America, whether urban, suburban, or even rural. My son cannot play outside our home in New Haven at night, because of fear of crime. There was a drug-related murder just a block from our house not long ago.

Unfortunately, most Americans live in much greater fear of crime than I. I want the single urban mother who fears for her child in school every day, from violent gangs, and the elderly widow

who is afraid to go to the supermarket after dark, to know that they have a friend in the Attorney General. Violent crime is not a partisan issue, it must be addressed firmly and fairly.

President-elect Clinton and I have one of the very highest priorities in the early introduction and passage of a comprehensive crime bill. He talked about many of its components during the campaign: 100,000 more police on the streets, passage of the Brady bill, a Federal death penalty law, and habeas corpus reform. We pledge to work closely with the Members of the Senate and the House on the particulars of this bill, to pass this legislation early.

Another critically important priority for the department is energizing our efforts to vindicate the civil rights of all Americans. It is fitting that this hearing is being held a day after we gave tribute to Martin Luther King, in recognition for his contributions to this Nation, which are so critical to the functions of the Justice Department.

A Department of Justice deserving of its name must be a leader in civil rights. It must have a vigorous and principled commitment to civil rights, and we will do that with renewed antidiscrimination enforcement in employment, housing, voting rights and education.

With the enactment of the Americans with Disabilities Act in 1991, the Federal Government has a powerful new tool to eliminate discrimination against the disabled. Promoting the civil rights of all Americans should not be an issue that divides us, but should be a way of bringing our country together, making us stronger, assuring that talents and aspirations of all Americans are included in our effort to be a better and more productive nation.

I specifically want to reassure those who are concerned that because I, like a number of my predecessors, have represented large commercial interests, that for some reason I am more tolerant of corporate misconduct. Nothing could be further from the truth. In fact, my activity in the business community often made me unpopular, because I was a determined advocate of corporate ethics and of voluntary disclosure of fraud to the Government.

I am particularly challenged by this prospect of bringing my expertise in this area to bear for my new client, the best client I will ever have, the people of the United States.

Vigorous environmental enforcement is also a high priority for this Department. We will work closely with the Environmental Protection Agency to ensure that the environment is protected, and that those who abuse it will be held accountable and prosecuted.

Our antitrust laws, too, must be made to work for America in the years ahead. We are going to require vigorous enforcement of the trade regulation laws, because we believe that competition in the markets benefit consumers.

And sustained and experienced attention must be brought to the management of the Department. The Department of Justice has grown by 40,000 employees since I worked there a decade ago. Management of such a large organization is not something that just falls into place. Inattention or inadequate management results in inefficiencies and distance and alienation from the people the Department is intended to serve. We must look to strong direction from the top, to new technologies, computerization, effective plan-

ning and implementation, and we must draw out the talent of those throughout the organization.

All of these efforts will be guided by more overarching goals: Restoring a deeper sense of purpose to the Department, infusing energy and new talent, insisting on nonpartisanship, professionalism and integrity, and promoting the ideal of justice.

The public must have confidence in the independence and integrity of the Department of Justice. We will have an open and accessible Department. The public must know that the Department is protected from inappropriate political intrusion.

I intend to insulate the line attorneys and litigation division chiefs from political contact. We will maintain a strict practice that any White House contacts must come through the Attorney General or the most senior Department officers. This should help to screen out and absorb the pressures inherent in such contacts.

Let me close by saying that there is no higher privilege I can imagine than having the opportunity and the responsibility to serve as Attorney General of the United States.

When I served as an attorney in the Department over a decade ago, the office I worked in was just down the hall from the Attorney General's Office. The hallways on that floor are, as you know, decorated with Depression-era art. These intense paintings depict the many faces of Americans who are affected every day by the work of the Department of Justice.

I remember the thrill and inspiration of working in that Department, instilled with the notion that my mission was to do my best for my country. I often reflected on the simple inscription in the rotunda of the Department of Justice that says that the United States wins its point when justice is done to its citizens in court.

If you confirm me as the 78th Attorney General, I pledge you my full cooperation in securing justice for the people of this country. And I will never forget that my most solemn responsibility is to that ultimate client, the people of the United States.

That concludes my formal statement. But before we move to questions, let me speak briefly to the issue of my child-care situation, which has received considerable public attention. It is a matter that, as you know, I raised at the outset with the President-elect's transition team, with the FBI, and with this committee.

As you are aware, last weekend, my husband and I paid a \$2,900 civil penalty for having hired an undocumented worker and her husband to take care of our son Julian. Earlier this month, we voluntarily paid the full amount of our Social Security taxes, with interest and penalties, for the period of their employment.

The hiring of this couple and our failure to pay the appropriate taxes at the time was wrong, and I take full responsibility for it. There are several facts I would like you to understand.

Before hiring the couple, my husband consulted with immigration lawyers in Connecticut who informed him that the immigration laws have employer sanctions for hiring someone not authorized to work in the United States, but the lawyers advised that the Immigration and Naturalization Service did not appear to view this as an enforcement matter, and explained the process provided for in the law to sponsor domestic workers for permission to work in this country.

After hiring the couple, we retained a lawyer who assisted us in completing the sponsorship process. The process called for us to disclose to the Labor Department and the INS that an undocumented worker was in our employ and living in our home, which we did. Our lawyer advised us that, in his experience, it was not possible to pay taxes for the employees until they got their Social Security numbers.

I believed that completing this process was an appropriate way to address the couple's status. But having said that, Mr. Chairman, Senator Hatch, and members of the committee, it was a violation of the law to hire undocumented workers. Our decision to hire the couple was wrong, and I deeply regret it.

I have always sought to uphold the highest ethical standards. I regret that my first discussion with you relates to the faulty hiring of child care, rather than our urgent need to address the issues that I discussed in my opening statement.

I respectfully ask you to view this in the context of my overall record, and if you confirm me, I will do everything in my power to uphold the integrity of this Department, to fulfill its promise, and to serve the American people.

[Biographical information of Ms. Baird follows:]

ZOE BAIRD

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name: Zoë Eliot Baird
2. Address:

Office - Aetna Life & Casualty Company
151 Farmington Avenue
Hartford, Connecticut 06156
3. Date and place of birth: June 20, 1952; Brooklyn, New York
4. Marital Status: Married to Paul David Gewirtz
Potter Stewart Professor of
Constitutional Law
Yale Law School
127 Wall Street
New Haven, CT 06520
5. Education:

A.B., With Great Distinction, 1974 University of California
at Berkeley (9/70-6/74).
J.D. 1977 Boalt Hall School of Law, University of California
at Berkeley (9/74-6/77). Supreme Court Editor, California
Law Review (Vol. 65, 1976-1977).
6. Employment Record:

Current Affiliations

Aetna Life & Casualty, its subsidiaries and affiliates:

July 1990-	Vice President and General Counsel, then
Present	Senior Vice President and General Counsel

Previously

1986-1990	Counsel -- Assigned Components, then Counsellor and Staff Executive, General Electric Company
1981-1986	Associate, then partner, O'Melveny & Myers, Washington, D.C. Office
1980-1981	Associate Counsel to the President of the United States (Jimmy Carter)
1979-1980	Attorney-Advisor, U.S. Department of Justice, Office of Legal Counsel
1977-1978	Law Clerk to the Honorable Albert C. Wollenberg, U.S. District Judge, Northern District of California

As of December 30, 1992, I also hold the following positions:

Director, Southern New England Telecommunications Corp.
 Director, The Southern New England Telephone Company
 Director, American Arbitration Association

Director, Science Park Development Corporation
 Director, Friends of Legal Services of South Central Conn.
 Director, Institute for Judicial Admin., NYU School of Law
 Board of Advisors, Institute for Governmental Studies,
 University of California at Berkeley
 Board of Advisors, Yale Repertory Theatre
 Legal Advisory Committee, New York Stock Exchange
 International Rule of Law Council, Lawyers Committee for
 Human Rights
 Member, Mentor Group-The Forum for US-EC Legal-Economic
 Affairs
 Member, Concord Coalition Planning Group
 Member, American Law Institute
 Board of Contributors, American Lawyer Media

7. Military Service: No.
8. Honors and Awards: Phi Beta Kappa, August 1974.
9. Bar Associations: Member of the Bars of Connecticut, the District of Columbia and California; member of the American Bar Association
10. Other Memberships: (the only one that I believe lobbies is denoted by *)

Mo/Year	Mo/Year	Activity
5/91	to Present	Director * Southern New England Telephone Company and Southern New England Telecommunications Corporation New Haven, CT
4/91	to Present	Director American Arbitration Assoc., New York, NY
3/92	to Present	Director Institute for Judicial Administration, New York University School of Law New York, NY
1/87	to Present	Director Science Park Development Corp. New Haven, CT
7/85	to Present	Director Friends of Legal Services of South Central Connecticut New Haven, CT
12/92	to Present	Member American Law Institute, Philadelphia, PA
9/92	to Present	Board of Advisors Legal Advisory Committee to the New York Stock Exchange Board of Directors New York, NY
9/89	to Present	Board of Advisors Institute for Governmental

	Studies, University of California at Berkeley Berkeley, CA
9/91 to Present	International Rule of Law Council Lawyers Committee for Human Rights New York, NY
9/89 to Present	Corporate Advisory Committee Yale Repertory Theatre New Haven, CT
5/91 to Present	Member Chief Legal Officers Roundtable Denver, CO
4/92 to Present	Mentor Group - The Forum for US-EC Legal Economic Affairs Boston, MA
6/92 to Present	Concord Coalition Planning Group New York, NY
8/90 to Present	Board of Contributors American Lawyer Media New York, NY
4/90 to 4/92	Director Henry L. Stimson Center Washington, DC
11/88 to 1/89	Member Transition Committee Joseph Lieberman, United States Senator New Haven, CT
11/90 to 1/91	Member Transition Committee Rosa DeLauro, United States Member of Congress New Haven, CT
1987	Public/Private Careers Project Center for Business and Government Kennedy School of Government Harvard University Cambridge, MA
1981 to 1986	Council on Foreign Relations; Council on Foreign Relations Study Group on Law and Foreign Policy; Council on Foreign Relations Study Group on International Telecommunications; Council on Foreign Relations Seminar on European Community United States Relations
1975 to 1977	Board - Alumni Council California Alumni Association

11. Court Admission: Admitted to the Bars of Connecticut in 1989, California in 1977 (inactive status) and the District of Columbia in 1980; also admitted to practice before the Supreme Court of the United States and various federal courts.
12. Published Writings: See attached: "Zoë Baird Publications;" "Zoë Baird Speeches;" and "Zoë Baird, Press."
13. Health: Excellent health. Last physical exam was July 21, 1992.
14. Public Office: See above.
- 15, 16 and 17.

LEGAL CAREER:

I have combined the responses to these three questions in a narrative because it may be more helpful to the Committee if, rather than providing a rendition of individual matters on which I have worked during my career, I set forth an overview of the key legal and other events which have shaped my career as an attorney, an advocate, and a manager of legal services. I would be happy to provide further detail on particular matters, consistent with the attorney-client privilege, if the Committee desires. I note that I am not a trial litigator, but a legal advisor, a manager, and an appellate lawyer. Therefore a number of the specific questions in items 15, 16, and 17 are inapplicable.

I have been fortunate during my career to have had the opportunity both to practice law and to supervise the legal work of others in a variety of settings: as an attorney in the government, as an associate and partner in a national law firm, and as counsel to two of the nation's major corporations.

GOVERNMENT (1977-1981)

1. Judicial Clerkship

The earliest years of my legal career, beginning upon my graduation in 1977 from the Boalt Hall School of Law at the University of California at Berkeley, were devoted to government service. Immediately after receiving my degree, I began a year-and-a-half's work as law clerk to the Honorable Albert C. Wollenberg, U.S. District Judge for the Northern District of California. During my clerkship I assisted Judge Wollenberg as he decided the procedural and substantive issues before him and participated in the research and drafting of orders and opinions. Judge Wollenberg sat on the Court of Appeals regularly during this period, and we also spent several weeks in Saipan, Northern Marianas Islands, establishing the first federal court for that area.

2. Office of Legal Counsel, Department of Justice

At the conclusion of my clerkship with Judge Wollenberg, I joined the Office of Legal Counsel

("OLC") at the U.S. Department of Justice as an Attorney-Advisor. The OLC, as the Committee is aware, assists the Attorney General in carrying out the Attorney General's responsibility to furnish legal advice to the President, to the heads of the executive and military departments, and to other components within the Department of Justice.

At OLC, I participated in most of the major functions of the Office, including counseling with the Attorney General and the Criminal Division on the interpretation of criminal statutes; interpreting the law relating to the constitutional authority for, and the limitations on, the actions and programs of the President and his Cabinet; mediating disputes among various departments of the government; and suggesting legal and practical resolutions to a variety of international law questions.

3. Associate Counsel to the President of the United States

In June 1980, Lloyd N. Cutler, Counsel to President Jimmy Carter, invited me to join the staff of the White House Counsel's office as Associate Counsel to the President. I remained in that post until early 1981, when the Reagan Administration assumed office.

During this period, I was involved in advising and writing on a broad spectrum of issues affecting the Executive Branch in general, and the President in particular. I worked on a variety of international matters including those related to the effort to obtain the release of U.S. hostages in Iran. I counseled on constitutional issues related to the powers of the President, including questions concerning his veto power and the scope of Executive Privilege. I also mediated differences between agencies.

PRIVATE PRACTICE OF LAW (1981-1986)

In April 1981, I began private practice in the Washington, D.C., office of O'Melveny & Myers as an associate, and I later became a partner. My practice focused on domestic and international regulatory matters and federal appellate litigation. I was consulted on most of the matters in the firm that involved a potential appearance before the Supreme Court of the United States. My work on Supreme Court matters ranged from providing advice concerning the advisability of petitions for certiorari to fashioning the substance of briefs filed with the Court.

Among the significant representations in which I participated during my six years at O'Melveny & Myers were the following:

1. Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

I worked on this matter with O'Melveny & Myers partner and former Secretary of Transportation, William T. Coleman, Jr. The case, which had a complex procedural history, ultimately resulted in a decision addressing the scope of the federal government's power

vis-a-vis the states under the Commerce Clause of the United States Constitution.

The opportunity to present this matter to the Court arose in connection with the firm's retention by the American Public Transit Association ("APTA"). APTA sought to intervene on behalf of the San Antonio Metropolitan Transit Authority in litigation involving application of the Fair Labor Standards Act ("FLSA"), and the regulations developed by the Department of Labor pursuant to the Act, to state and local activity. My efforts involved researching and preparing several briefs filed with the Supreme Court, including a supplemental brief requested by the Court on the issue of whether National League of Cities v. Usery, 426 U.S. 833 (1976), should be overruled. I also assisted Mr. Coleman in preparing for two oral arguments made to the Court.

2. Summa Corporation v. California, 466 U.S. 198 (1984).

This matter arose out of an effort by the City of Los Angeles and the State of California to acquire an easement interest in property owned by Summa Corporation. The question ultimately presented to the Supreme Court focused on a decision by the California Supreme Court concerning the interaction of federal and state law with an 1848 treaty between the United States and Mexico.

My principal role in this matter was to assist O'Melveny & Myers partner (and Secretary of State Designate) Warren Christopher in preparing the brief and argument for Summa in the Supreme Court. I also participated in discussions with the Solicitor General and others at the Department of Justice concerning the briefs filed by the United States. In connection with this matter, I conducted original research in the Archives of the Library of Congress and the library of California history at the University of California at Berkeley; the product of this research was relied upon by the Court in its decision.

3. E. F. Hutton & Co., Inc.

I had significant involvement in Mr. Christopher's representation of E. F. Hutton & Co., Inc. ("Hutton") subsequent to a guilty plea by Hutton in a case brought by the Department of Justice. Over a two-year period, I was involved in a broad range of issues arising out of an inquiry by a Subcommittee of the House Judiciary Committee and inquiries by state regulatory and enforcement agencies.

4. Southern Natural Gas Co./Consolidated Gas Co./Columbia Gas Co.

I assisted Mr. Christopher in representing three United States natural gas companies in international negotiations with Algeria concerning contracts for the purchase and sale of liquified natural gas. My responsibilities included research into a variety of international law issues, the preparation of complex international agreements for the sale of natural gas, and consultation concerning negotiating approaches and responses.

5. United States International Trade Commission ("USITC") and Other Trade/Competition Matters

During my years at O'Melveny & Myers, I worked on a variety of trade matters for clients of the firm, both domestic and foreign. My work included providing advice and representation on antitrust, antidumping, and countervailing duty issues, as well as participating in Section 201 and other administrative proceedings before the USITC and other administrative agencies.

6. Baldwin United Bankruptcy

During 1985, I devoted a great deal of my time to matters related to the bankruptcy of Baldwin United Corporation. The firm represented the debtor. My principal work in this matter focused on disputes over the jurisdiction of the Bankruptcy Court to hear and resolve claims. One aspect of that work involved the researching, drafting and submission of what proved to be a successful brief to the U.S. Court of Appeals for the Second Circuit, arguing that a lower court had improperly interfered with the Bankruptcy Court's power to resolve certain indemnity claims. See In re Baldwin-United Corp. Litig., 765 F.2d 343 (2d Cir. 1985). I also prepared a petition for certiorari to the Supreme Court of the United States in connection with a challenge by a state insurance commissioner to the Bankruptcy Court's jurisdiction. The matter was ultimately resolved without need to resort to the Court.

In addition to my jurisdictional work in Baldwin United, I developed and implemented strategies for resolving a group of creditors' claims, only one of which ultimately required argument and resolution by the Bankruptcy Court.

7. Public Interest and Pro Bono Activity

While at O'Melveny & Myers, I was regularly consulted concerning ethics and conflict of interest issues which arose in connection with new or existing representations. I also devoted a portion of my calendar to pro bono activity, both individually and in a supervisory role. Shortly after I became a partner at the firm, I was named Chair of the Pro Bono Committee and was therefore responsible for administering all such activity by every attorney in the Washington, D.C. office.

One of the most visible pro bono matters to which I contributed while at the firm was participation in William T. Coleman, Jr.'s efforts before the Supreme Court in Bob Jones University v. United States, 461 U.S. 574 (1983), in which the Supreme Court accepted the position he advocated that the IRS could properly deny tax-exempt status to educational institutions that practiced racial discrimination.

A major pro bono project was my effort with Lloyd N. Cutler to assist those in Congress seeking reenactment of the Independent Counsel statute. I devoted a great deal of time in 1981-82 to that effort including developing amendments to improve the Act.

CORPORATE PRACTICE (1986-PRESENT)

1. General Electric

I relocated to Connecticut in September 1986, after marrying Paul Gewirtz, a professor of law at the Yale Law School. Currently he is the Potter Stewart Professor of Constitutional Law. I resigned my partnership at O'Melveny & Myers at the end of August, 1986, when offered a position by the Chairman of the General Electric Corporation ("GE") in Fairfield, Connecticut. My title was Counsel - Assigned Components and later Counsellor and Staff Executive.

One of the General Counsel for whom I worked at General Electric described my job as that of "managing partner of GE's legal organization." I played a significant role in managing the administrative and human resource functions for 375 lawyers; for supervising a broad range of legal projects, including a variety of corporate, regulatory, criminal, antitrust, securities and international trade matters; and for management or oversight of major investigations of GE's business practices by public agencies in a number of cases.

I had particular responsibility at GE for oversight of a variety of investigations of allegations of defense contract fraud and other related problems. In that connection, I had a lead role in implementing a company-wide voluntary disclosure and contract compliance program. I was a leader in developing the Defense Industry Initiative on Business Ethics and Conduct, a program based upon voluntary disclosure and self-policing of potential violations. I spoke regularly to industry groups in an attempt to develop broad industry participation in the Initiative.

I also took a lead role in defining and drafting amicus briefs to the Supreme Court of the United States, in support of positions of common concern to GE and to industry associations of which GE was a member.

2. Aetna Life & Casualty

In 1990, I was invited to join Aetna Life and Casualty Company as Vice President and General Counsel. I was subsequently promoted to the position of Senior Vice President and General Counsel.

Aetna is the largest shareholder-owned insurance and financial services company in the United States, with 1991 revenues of \$19 billion. It is among the fifteen largest American companies. The company has a legal staff of 120 with an annual legal budget of more than \$90 million. The legal issues facing Aetna, a complex financial services institution, span a wide range from constitutional law to state regulatory law.

In addition to encountering a new scope of substantive legal matters, I became the chief executive of a large legal department, as well as a senior officer of a major corporation.

As Aetna's chief legal officer, I have overseen the legal activities of its 120 lawyers. These

responsibilities have included supervising a broad range of legal work on regulatory, litigation and corporate matters; developing and implementing legal strategies to further new business objectives; developing a strategic litigation approach for the company; and positioning Aetna to take advantage of emerging global opportunities.

I served as a leading member of a joint defense team in a case brought by the Attorneys General of nineteen states, along with several private plaintiffs, alleging antitrust violations by various members of the insurance industry in the United States and abroad. That case is currently awaiting decision by the Supreme Court of the United States. I also took the lead in successful settlement negotiations with the Office of the Attorney General of Texas in connection with an antitrust action raising similar issues. That settlement involved a restructuring of the way in which insurers develop standardized forms that are sometimes used in providing general liability insurance.

I have undertaken a major initiative to create a dialogue within the American legal community aimed at changing the approach to compensating lawyers and law firms. At Aetna, I have fashioned a program to compensate outside counsel in a way that creates economic incentives for efficiency and quality, matching fees to the value of services received. (In the attached press materials is a Business Week article on this issue.)

Finally, I have spent a major portion of my time and energies since joining Aetna as a manager: participating as a member of the senior Management Group in major decisions affecting the Company and reorganizing the legal organization.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Stock Options: Pursuant to the Aetna Life and Casualty Stock Option Plan, I have outstanding Aetna stock options for 19,800 shares. 5,800 options granted on 6/26/92 at an exercise price of \$42.125 per share have not vested and will be forfeited in the event of the termination of my employment prior to 6/93. 4,000 options granted on 6/28/91 at an exercise price of \$41.50 per share are currently vested and will expire 90 days after termination of employment. 10,000 options granted on 7/16/91 at an exercise price of \$53.373 per share are currently vested and will expire 90 days after termination of employment.

Benefit Plans: Pursuant to the Supplemental Benefit Plan for Certain Employees of Aetna Life and Casualty, I have the right to retirement benefits payable at age 65. Based on service credits through 12/31/92, the estimated monthly benefit payable on a straight single life basis (without Social Security offset) commencing 7/1/17 is \$6,221.18. These benefits are an unfunded obligation of Aetna.

Incentive Savings Plans: Pursuant to the Aetna Life and Casualty Incentive Savings Plan, a qualified profit-sharing thrift plan, I have vested account values as of 12/28/92 of \$38,232.94 (\$22,775.05 in the common stock fund and \$15,475.89 in the interest accumulation account).

In addition, pursuant to the Supplemental Incentive Savings Plan for Certain Employees of Aetna Life and Casualty Company, an unfunded, non-qualified deferred compensation plan, I have account values as of 12/28/92 of \$51,843.71 (all in the interest accumulation account).

Bonus Programs: I am eligible for a bonus award for performance year 1992 pursuant to the 1986 Management Incentive Plan (MIP). Performance rating has been proposed, but award determination for the 1992 MIP performance year has not yet been made by Aetna's Board of Directors. I am also eligible for a bonus award under the Performance Unit Plan (PUP) for a portion of the 1989-1992 performance period as determined by Aetna's Board of Directors.

Life Insurance: I have \$310,000 of life insurance in force under an executive split dollar policy jointly owned with Aetna. Upon the termination of my employment, the split dollar arrangement will terminate. In addition, I have \$800,000 in term life insurance with no cash surrender value, 24-hour group accident coverage for myself and my dependents, dependents' life insurance and group medical and dental coverage.

Other: Upon termination of my employment at Aetna, I will be eligible to receive pay for all earned but unused vacation (to a maximum of 25 days). The current value of my earned unused vacation days is approximately \$27,690.00.

As a director of Southern New England Telecommunications Corporation and Southern New England Telephone Company, I participate in a pension plan of these companies (although my pension benefits currently are not vested). I also receive the following benefits as a director: life insurance (\$100,000), accidental death and dismemberment insurance (\$100,000), a telephone concession, including free basic telephone and \$35 of intrastate calls, and a matching gift program.

2. The Executive Branch Public Financial Disclosure Report (Form 278) is in the process of being completed; and my representatives are in discussions with the Office of Government Ethics and Department of Justice officials with a view toward minimizing my financial interest conflicts to the maximum possible extent, either through divestitures of all or substantially all of my current individual investments (with reinvestments in Government securities and broadly diversified mutual funds) or through the creation of a Qualified Diversified Trust. In addition, I presently intend to dispose of all of my financial interests in Aetna Life & Casualty Company and General Electric Corporation. Notwithstanding this complete divestiture, I will recuse myself from particular matters that have a direct and predictable effect on Aetna or GE in accordance with established Department of Justice and Office of Government Ethics policies and practices.

I understand that upon completion of these ongoing reviews by the Department of Justice and the Office of Government Ethics, the Committee on the Judiciary will be formally advised by the Office of Government Ethics of the results of these deliberations.

3. No.
4. Income for 1992: salary from Aetna Life and Casualty, \$507,105; Director income from Southern New England

Dividend and interest income to be disclosed on Executive Branch Public Financial Disclosure Report (SF-278) currently under review by the Office of Government Ethics.

5. Attached.
6. I have never run for political office. I had management responsibility for the 1972 Congressional campaign of Brock Adams (D-WA), and was on the Transition Committee for Senator Joe Lieberman (D-CT) and on the Transition Committee for Member of Congress Rosa DeLauro (D-CT).

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	645,528	Notes payable to banks—secured	
U.S. Government securities—add schedule	200,000	Notes payable to banks—unsecured	
Listed securities—add schedule	972,228	Notes payable to relatives	
Unlisted securities—add schedule	187,302	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends	0	Unpaid income tax	
Due from others	0	Other unpaid tax and interest	
Doubtful	0	Real estate mortgages payable—add schedule	60,000
Real estate owned—add schedule	110,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable	0	Other debts—itemize:	
Autos and other personal property	175,000		
Cash value—life insurance			
Other assets—Itemize:			
		Total liabilities	60,000
		Net worth	
		Total liabilities and net worth	60,000
Total assets	2300050		
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add schedule.)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

SCHEDULES TO FINANCIAL STATEMENTLISTED SECURITIES

Southern New England Telephone	\$8,219
Kidder Select - Zoe	\$180,869
Kidder Select - Paul	\$189,827
Pacific Gas & Electric	\$12,936
GE	\$87,500
U.S. Steel	\$320
GM	\$330
May Venture	\$9,851
IRA GT Global - Zoe	\$60,418
IRA Kidder Global - Paul	\$23,761
MIT	\$18,908
Aetna Options	\$19,000
Aetna Stock ISP	\$22,775
TIAA/CREF	<u>\$337,522</u>
Total	\$972,226

UNLISTED SECURITIES

Aetna	
Pension	\$130,000
Aetna Interest Accumulation Account	<u>\$67,302</u>
Total	\$197,302

GOVERNMENT SECURITIES

U.S. Treasury 7/25/98 8.25%	\$50,000
U.S. Treasury 8/15/01 7.87%	\$100,000
U.S. Treasury 8/31/96 7.25%	\$50,000

REAL ESTATE

Washington Condo (Fair Market Value)	\$110,000
Mortgage	(\$60,000)

Individual stocks are listed on Schedule A of Executive Branch Public Disclosure Report Ethics and Government Act 1978

III. GENERAL (PUBLIC)

1. As a matter of both personal commitment and professional obligation, I have participated in a variety of activities to serve the disadvantaged. In recent years my main activities have been the following:
 - (i) For the past seven years, I have served on the Board of Directors of the Friends of Legal Services of South Central Connecticut, which seeks support for the main organization in our region providing legal services to the indigent.
 - (ii) For the past six years, I have been on the Board of Directors of Science Park Development Corporation. Science Park is an innovative non-profit corporation located in one of New Haven's poorest communities. Its mission is to improve the depressed economy of the local region by developing the surrounding minority community through job development, job training and affiliations with community-based organizations. In its most difficult initial years, I had a substantial role in helping Science Park establish its mission, obtain political and financial backing, and recruit a Chief Executive Officer and a Board.
 - (iii) Since 1991, I have been on the International Rule of Law Council of the Lawyers' Committee for Human Rights in New York City, one of the leading private organizations seeking to address human rights abuses around the world.
 - (iv) Since 1989, I have been member of the Corporate Advisory Committee of the Yale Repertory Theater, who under Lloyd Richards' recent leadership has sought to actively serve the minority community.
 - (v) As Aetna's General Counsel, I have given support to Aetna's unusual corporate legal pro bono program. Office time, facilities, and resources are provided to encourage active participation in pro bono activities, and I have tried to give personal leadership to this effort. Aetna's legal organization has developed and operates a legal services program for the elderly. Aetna also assists organizations such as the Legal Aid Society of Hartford. I personally developed a pro bono program for law students employed by Aetna during the summer, providing them the opportunity to split their summers between our offices in Hartford and a public interest activity of their choice. Aetna has also been a leader in promoting the utilization of minority outside counsel, developing (before my arrival) a Minority Counsel Program that has become a model for the American Bar Association's national program; I have actively supported this effort internally, and have used speeches and conference participation to promote its objectives.
2. No.

Question 15:

Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 2. whether you practiced alone, and if so, the addresses and dates;
 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
- b.
 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- c.
 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
 2. What percentage of these appearances was in:
 - (a) federal courts;
 - (b) state courts of record;
 - (c) other courts.
 3. What percentage of your litigation was:
 - (a) civil
 - (b) criminal.
 4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 5. What percentage of these trials was:
 - (a) jury;
 - (b) non-jury.

Response to 15a. (1-3):

After graduation from law school in 1977, I accepted a clerkship with the Honorable Albert Wollenberg, Sr. of the United States District Court for the Northern District of California. My Clerkship with Judge Wollenberg extended until early 1979, when I accepted a position with the United States Department of Justice

in Washington, D.C., as an Attorney Advisor with the Office of Legal Counsel ("OLC"). I remained with the OLC until June 1980, when I became Associate Counsel to the President of the United States, a position which I held until January of 1981, when the Carter Administration left office.

In April 1981 I became an associate with the law firm of O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004. In February 1986 I became a partner of the firm and held that position until the end of August of 1986, when I resigned my partnership. In November 1986 I began work as Counsel-Assigned Components at the General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431. In December 1988 I became Counselor and Staff Executive at General Electric, a position which I held until June of 1990, when I left the Company. In July of 1990 I became Vice President & General Counsel of the Aetna Life & Casualty Company ("Aetna"), 151 Farmington Avenue, Hartford, Connecticut 06156. In April 1992 I became Senior Vice President and General Counsel of Aetna, the position I currently hold.

Response to 15b.1.
1977-early 1979:

During my clerkship with Judge Wollenberg, I assisted him as he decided the procedural and substantive issues before him, and I participated in the research and drafting of orders and opinions. Judge Wollenberg sat on the United States Court of Appeals regularly during this period, and we also spent several weeks in Saipan, Northern Marianas Islands, where he helped establish the first federal court for that area.

Early 1979 - June 1980:

As an Attorney-Advisor at the Office of Legal Counsel in the Department of Justice, I participated in most of the major functions of the Office, including counseling with the Attorney General and the Criminal Division on the interpretation of criminal statutes. My responsibilities also included the interpretation of law relating to the constitutional authority for, and the limitations on, the actions and programs of the President of the United States and Cabinet; mediating disputes among various departments of the government; and suggesting legal resolutions to a variety of international law questions.

June 1980 - January 1981:

During the time I served as Associate Counsel to the President of the United States, I was involved in advising and writing on a broad spectrum of issues affecting the Executive Branch in general, and the President in particular. I worked on a variety of international matters, including those related to the effort to obtain the release of U.S. hostages in Iran. I counseled on constitutional issues related to the powers of the President, including questions related to the exercise of his veto power and the scope of Executive Privilege. I also mediated differences among agencies.

April 1981 - August 1986:

My law practice as an associate, and later as a partner of O'Melveny & Myers, focused on domestic and international regulatory matters and federal appellate litigation.

November 1986 - June 1990:

During my employment at the General Electric Company, I served in a capacity which a General Counsel of the , company referred to as "managing partner of GE's legal organization." As such, I played a significant role in managing the administrative and human resources functions for 375 lawyers; for supervising a broad range of legal projects, including a variety of corporate, regulatory, criminal, antitrust, securities and international trade matters; and for management or oversight of major investigations of GE's business practices by public agencies in a number of cases. While at GE, I also took a lead role in defining and drafting amicus briefs to the Supreme Court of the United States, in support of positions of common concern to GE and to industry associations of which GE was a member.

July 1990 - Present:

As Aetna's chief legal officer, I have overseen the legal activities of its 120 lawyers. These responsibilities have included supervising a broad range of legal work on regulatory, litigation and corporate matters; developing and implementing legal strategies to further new business objectives; developing a strategic litigation approach for the company; and positioning Aetna to take advantage of emerging global opportunities. While at Aetna, I have spent a major portion of my time and energies as a , manager, participating as a member of the senior management group in major decisions affecting the Company and reorganizing the legal organization.

Response to 15b.2.:

During the period of my employment at O'Melveny & Myers, my typical clients were commercial enterprises that sought assistance in connection with regulatory or federal appellate matters. The other clients whom I have served during my legal career, aside from my government service, are the General Electric Company and Aetna Life & Casualty.

The General Electric Company is a diversified manufacturing, services and technology company, with 13 major businesses, ranging from aircraft engines to financial services to major appliances. It is regarded as one of the significant companies in America and the world, with 1991 revenues of \$60.2 billion and 284,000 worldwide employees. Aetna is the largest shareholder-owned insurance and financial services organization in the United States, with 1991 revenues of \$19 billion. It is among the fifteen largest American companies.

Response to 15c.1.:

The core of my practice at O'Melveny & Myers involved analysis, research, drafting, strategic planning and negotiation. I made few oral presentations in court.

15c.2.: The one court appearance that I currently recall was in connection with the Baldwin United Bankruptcy Litigation. On that occasion, I argued a motion concerning a creditor's claim on behalf of the debtor. Accordingly, my responses to the subparts of this question are as follows:

15c.2.(a): 100%
 15c.2.(b): 0%
 15c.2.(c): 0%

15c.3.: All of the litigation in which I was involved during my tenure at O'Melveny & Myers was civil or regulatory in nature. Although this question is apparently directed only to my work as an "outside" attorney, representing clients on an engagement basis, I was involved in the conduct and resolution of both civil and criminal litigation as a result of my work at General Electric and at Aetna. Accordingly, my responses to the subparts of this question are as follows:

15c.3.(a): 100%
15c.3.(b): 0%

15c.4.: None.

15c.5.: Not applicable.

Question 16:

Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response to Question 16:

1. Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

This case, which had a complex procedural history, ultimately resulted in a decision addressing the scope of the federal government's power vis-a-vis the states under the Commerce Clause of the United States Constitution.

The opportunity to present this matter to the Court arose in connection with the firm's retention by the American Public Transit Association ("APTA"). APTA sought to intervene on behalf of the San Antonio Metropolitan Transit Authority in litigation involving application of the Fair Labor Standards Act ("FLSA"), and the regulations developed by the Department of Labor pursuant to the Act, to state and local activity. My efforts involved researching and preparing several briefs filed with the Supreme Court, including a supplemental brief requested by the Court on the issue of whether National League of Cities v. Usery, 426 U.S. 833 (1976), should be overruled. I also assisted William T. Coleman, Jr., O'Melveny & Myers partner and former Secretary of Transportation, in preparing for two oral arguments made to the Court. The Court ultimately ruled in favor of the Federal Government, specifically overruling its earlier decision in National League of Cities.

(a) This representation took place during the early and middle 1980s.

(b) The case was ultimately litigated before the Supreme Court of the United States on direct appeal from the federal District Court for the Western District of Texas.

The case was initially argued before Judge Shannon in the federal District Court for the Western District of Texas. The decision is reported at 557 F. Supp. 445 (W.D. Tex. 1983).

(c) Counsel for appellant: Rex Lee, Sidley & Austin,

1722 I Street, N.W., Washington, D.C. 20006, Phone (202) 736-8000. Theodore Olson, Gibson, Dunn & Crutcher, 1050 Connecticut Ave, N.W., Washington, D.C. 20036, Phone (202) 955-8500; J. Paul McGrath, Allied Signal, 101 Columbia Road, Morristown, NJ 07962, Phone (201) 455-2000; Kenneth S. Geller, Mayer, Brown & Platt, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006, Phone (202) 463-2000; Joshua I. Schwartz, Associate Professor of Law, George Washington National Law Center, Washington D.C.; Michael F. Hertz, Department of Justice, Civil Division, 10th Street and Constitution Ave. N.W., Washington, D.C. 20530, Phone (202) 514-3301; Douglas Letter, Department of Justice, Civil Division, 10th Street and Constitution Ave. N.W., Washington, D.C. 20530, Phone (202) 514-3301; Laurence Gold, 815 16th Street, N.W., Washington, D.C., Phone (202) 737-1717; Earle Putnam, General Counsel, Amalgamated Transit Union, AFL-CIO; Linda Hirshman, Associate Professor of Law, Chicago-Kent College of Law, Chicago, IL; Robert Chanin, Bredhoff & Kaiser, 1000 Connecticut Ave, N.W. Washington, D.C 20036, Phone (202) 833-9340; George Kaufmann, Arnold & Porter, 399 Park Ave., New York, N.Y. 10022-4690, Phone (212) 715-1000.

In addition to myself, counsel for appellees included: William T. Coleman, Jr., Donald T. Bliss, O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004-1109, Phone (202) 383-5300; George P. Parker, Matthews & Branscomb, One Alamo Center, San Antonio, TX 78205, Phone (512) 226-4211.

Trial Counsel are listed below:

Counsel for Metropolitan Transit Authority: George P. Parker, Matthews & Branscomb, One Alamo Center, San

Antonio, TX 78205, Phone (512) 226-4211; Charles J. Fitzpatrick, Matthews & Branscomb, One Alamo Center, San Antonio, TX 78205, Phone (512) 226-4211; Lewis T. Tarver, Matthews & Branscomb, One Alamo Center, San Antonio, TX 78205, Phone (512) 226-4211.

Counsel for American Public Transit Association:

William T. Coleman, Jr., 555 13th Street N.W., Washington, D.C. 20004-1109, Phone (202) 383-5300; Donald T. Bliss, 555 13th Street N.W., Washington, D.C. 20004-1109, Phone (202) 383-5300; Hubert W. Green, Green, McReynolds & Reed, 2000 Commerce Plaza Building, 111 Soledad Street, San Antonio, TX 78205, Phone (512) 227-8800.

Counsel for Raymond J. Donovan, Secretary of Labor:

Dennis Linder, Department of Justice, Civil Division, 10th Street & Constitution Ave., N.W., Washington, D.C., 20530, Phone (202) 514-3301; Mark Rutzick, Preston, Thorgrimson, Shidler, Gates & Ellis, 3200 United States Bancorp Tower, 11 Southwest 5th Ave., Portland, OR 97204, Phone (503) 228-3200; Edward C. Prado, United States District Judge, Western District of Texas, 655 East Durango Blvd., San Antonio, TX 78206, Phone (512) 229-4060.

Counsel for Joe G. Garcia: Linda R. Hirshman, Associate Professor of Law, Chicago-Kent College of Law, Chicago, IL; Kalman D. Resnick, Gessler, Flynn, Fleischmann, Hughes & Socol, LTD., Three First National Plaza, Suite 2200, Chicago, IL 60602, Phone (312) 580-0100; Les Mendelsohn, Speiser, Krause, Madole & Mendelsohn, Mata, 300 Convent Street, Suite 2600, San Antonio, TX 78205, Phone (512) 230-8900.

2. Summa Corporation v. California, 466 U.S. 198 (1984).

This matter arose out of an effort by the City of Los Angeles and the State of California to acquire an easement interest in property owned by Summa Corporation. The question ultimately presented to the Supreme Court focused on a decision by the California Supreme Court concerning the interaction of federal and state law with an 1848 treaty between the United States and Mexico.

My principal role in this matter was to assist O'Melveny & Myers partner (and Secretary of State Designate) Warren Christopher in preparing the brief and argument for Summa in the Supreme Court. I also participated in discussions with the Solicitor General and others at the Department of Justice concerning the briefs filed by the United States. In connection with this matter, I conducted original research in the Archives of the Library of Congress and the library of California history at the University of California at Berkeley. The product of that research was relied upon by the Court in its decision. The Supreme Court, reversing an earlier decision by the California Supreme Court, found in favor of Summa Corporation.

(a) This representation took place between 1982 and 1984.

(b) The case was litigated before the Supreme Court of the United States.

(c) Counsel for California included: Nancy Alvarado Saggese, address unknown. John K. Van De

Kamp, Dewey Ballantine, 333 South Hope Street, Los Angeles California 90071, Phone (213) 626-3399; N. Gregory Taylor, Executive Assistant to General Manager, Room 600, 3580 Wilshire Blvd., Los Angeles, CA 90010, Phone (213) 736-2086; Gary R. Netzer, Senior Assistant City Attorney, One World Way, Los Angeles, CA 90009, Phone (213) 646-3260; Ira Reiner, District Attorney, 18-706 Criminal Courts Building, 210 W. Temple Street, Los Angeles, CA 90012, Phone (213) 974-3611; Norman L. Roberts, General Counsel, Litton Industries, Inc., 360 N. Crescent Drive, Beverly Hills, CA 90210, Phone (310) 859-5000.

In addition to myself, counsel for Summa Corp. included: Warren M. Christopher, O'Melveny & Myers, 400 South Hope Street, 15th Floor, Los Angeles, CA 90071, Phone (213) 669-6000; Henry C. Thumann, O'Melveny & Myers, 400 South Hope Street, 15th Floor, Los Angeles, CA 90071, Phone (213) 669-6000; William M. Bitting, Hill, Farrer & Burrill, 35th Floor, Union Bank Sq., 445 S. Figueroa St., Los Angeles, CA 90071, Phone (213) 620-0460; Steven W. Bacon, Hill, Farrer & Burrill, 35th Floor, Union Bank Sq., 445 S. Figueroa St., Los Angeles, CA 90071, Phone (213) 620-0460.

3. In Re Baldwin-United Corporation Litigation, 765 F.2d 343 (2d Cir. 1985).

This litigation involved the bankruptcy of Baldwin-United Corporation.

O'Melveny & Myers represented the debtor, Baldwin-United Corp. My principal work in this matter focused

on disputes over the jurisdiction of the Bankruptcy Court to hear and resolve claims. One aspect of that work involved the researching, drafting and submission of a brief to the United States Court of Appeals for the Second Circuit, arguing that a lower court had improperly interfered with the Bankruptcy Court's power to resolve certain indemnity claims. The brief was ultimately successful, as the Second Circuit found in Baldwin-United's favor on this issue. I also prepared a petition for certiorari to the Supreme Court of the United States in connection with a challenge by a state insurance commissioner to the Bankruptcy Court's jurisdiction. The matter was ultimately resolved without need to resort to the Court. In addition to my jurisdictional work for Baldwin-United, I developed and implemented strategies for resolving a group of creditors' claims, only one of which ultimately required argument and resolution by the Bankruptcy Court.

(a) This representation took place in 1985.

(b) This case was heard by a panel of the United States Court of Appeals for the Second Circuit, including Circuit Judges Lumbard, Mansfield and Newman.

(c) Counsel for appellees included: Eva H. Posman, 666 5th Ave, New York, N.Y.; Martin P. Unger, Tenzer, Greenblatt, Fallon & Kaplan, The Chrysler Building, 405 Lexington, Ave., New York, N.Y. 10174, Phone (212) 573-4300; Andrew Levchuk, Department of Justice, Criminal Division, 10th Street and Constitution Ave., N.W., Washington,

D.C. 20530, Phone (202) 514-2601; Charles F. Vihon, Much, Shelist, Freed, Denenberg & Ament, P.C., 200 North LaSalle Street, Suite 2100, Chicago, IL 60601-1095, Phone (312) 246-3100.

In addition to myself, counsel for appellants included: Richard G. Parker, O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004-1109, Phone, (202) 383-5000; Robert J. White, O'Melveny & Myers, 400 South Hope Street, 15th Floor, Los Angeles, CA 90071, Phone (213) 669-6000.

4. United Transportation Union v. Long Island Rail Road Co., 455 U.S. 678 (1982).

This case, which preceded the Garcia case, item 1 above, involved the question of whether the Federal Railway Labor Act applied to a state-owned railroad.

My work on this case involved assisting William T. Coleman, Jr., in preparing an amicus brief on behalf of the American Public Transit Association. The brief supported the Long Island Rail Road's argument that the federal law could not apply under National League of Cities. The Court ultimately decided that the Railway Labor Act did apply, despite National League of Cities, because application of federal railroad law to a state-owned railroad would not so impair the state's ability to carry out its sovereign functions as to conflict with the Tenth Amendment.

(a) This representation took place in 1982.

(b) The case was litigated before the Supreme Court of the United States.

(c) Counsel for petitioner included: Edward Friedman, 10702 Weymouth Street W, Garrett Park, MD; Robert Hart, address unknown; Harold A. Ross, address unknown.

Counsel for respondent included: Lewis B. Kaden, Davis Polk & Wardwell, One Chase Manhattan Plaza, New York, N.Y. 10005, Phone (212) 530-4000; Mary P. Bass, 435 Riverside Drive, New York, N.Y.; Thomas M. Taranto, address unknown.

In addition to myself, counsel for amicus curiae American Public Transit Association, included: William T. Coleman, Jr., O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004-1109, Phone (202) 383-5318; Donald T. Bliss, O'Melveny & Myers, 555 13th Street, N.W., Washington, D.C. 20004-1109, Phone (202) 383-5318.

5. In re Hamilton Jordan, 745 F.2d 1574 (D.C. Cir. 1984).

This case involved Hamilton Jordan's request for attorneys' fees incurred as a result of having been investigated by an independent counsel.

The United States Court of Appeals for the District of Columbia Circuit ultimately denied the request.

(a) This representation took place in 1984.

(b) This case was litigated before a panel of the United States Court of Appeals for the District of Columbia Circuit, composed of Senior Circuit Judges Robb, Lumbard and Morgan.

(c) Counsel for the United States included: William Kanter, Department of Justice, Civil Division, 10th Street and Constitution Ave, N.W., Washington, D.C. 20530, Phone (202) 514-3301; John F. Cordes, Nuclear Regulatory Commission, Office of the General Counsel, One White Flint North Building, 11555 Rockville Pike, Rockville, MD 20852, Phone (301) 504-1600.

In addition to myself, counsel for the applicant included: Richard G. Parker, O'Melveny & Myers, 555 13th Street N.W., Washington, D.C. 20004-1109, Phone (202) 383-5300; Lloyd N. Cutler, Wilmer, Cutler & Pickering, 2445 M Street, Washington, D.C. 20037-1420, Phone (202) 663-6000.

6. In Re Insurance Antitrust Litigation

Currently pending in the Supreme Court of the United States, the case is cited as Hartford Fire Insurance Co., et al v. State of California et al under Docket Number 91-1111. In the Ninth Circuit Court of Appeals, the case is cited as In re Insurance Antitrust Litigation, 938 F.2d 919 (9th Cir. 1991). In the District Court the case is cited as In re Insurance Antitrust Litigation, 723 F.Supp. 464 (N.D. Cal. 1989).

In 1988, the Attorneys General of 19 states, along with several private plaintiffs, filed class action suits against both U.S. insurers and reinsurers, as well as foreign reinsurers, alleging that agreements among defendants on policy form issues both forfeited their antitrust immunity under the McCarran Act and constituted a McCarran-exempt boycott violating federal antitrust laws. In 1989, all counts against all defendants were dismissed by the district court. In June, 1991, the Ninth

Circuit reversed the district court decision, stating that the alleged acts of defendants are not protected by McCarran, and that the case should proceed to trial. On October 5, 1992, the Supreme Court granted the defendants' petition for review on the forfeiture and boycott issues.

My participation in this case has been as a leading member of the joint defense team. I have been involved in overall litigation strategy and in decision-making on legal issues central to the case.

(a) The representation has been ongoing since my arrival at Aetna.

(b) Prior to the time I arrival at Aetna the case was litigated in the trial court before Judge Schwarzer in the United States District Court for the Northern District of California. It was than argued and decided on appealed by Circuit Judges Beezer and Noonan and District Judge Singleton in the United States Court of Appeals for the Ninth Circuit. It is scheduled for oral argument before the Supreme Court of the United States on February 23, 1993 at 1:00 p.m.

(c) Supreme Court Counsel for plaintiffs include: J. Joseph Curran, Jr., Office of the Attorney General, 200 St. Paul Place, 19th Floor, Baltimore, MD 21202, Phone (410) 576 6470; Ellen S. Cooper, Office of the Attorney General, 200 St. Paul Place, 19th Floor, Baltimore, MD 21202, Phone (410) 576 6470; James H. Evans, Office of the Attorney General, 11 South Union Street, Montgomery, AL 36130, Phone (205) 242-7300; Marc Givhan, Office of the Attorney General, 11 South Union Street, Montgomery, AL 36130, Phone (205) 242-7300;

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7. Texas Antitrust Litigation (State of Texas v. Insurance Services Office, Inc., et al, 53rd Judicial District, Travis County Texas, Docket Number 439,089.)

The allegations in the Texas antitrust litigation were, for all intents and purposes, the same as those described above In Re Insurance Antitrust Litigation. In March 1991, the Texas case was settled by the remaining defendants, including Aetna.

I was one of the two lead counsel involved in resolving this matter through negotiations with the Texas Attorney General on behalf of the defendants.

(a) The representation began with my arrival at Aetna and ended with settlement of the case in March 1991.

(b) At the time of settlement, the case was pending before the Honorable Peter M. Lowry.

(c) Counsel for Texas included: Jim Mattox, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Dan Morales, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Will Pryor, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Mary F. Keller, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Alleene D. Evans, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Mark Tobey, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; John J. White, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711 (512) 463-2185; Floyd Russel Ham, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711

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8. Stepak v. Aetna Life and Casualty, Civ. No H-90-886 (ALC)
(D. Conn.)

This lawsuit, filed in October 1990, is a class action under the Securities Exchange Act of 1934 and state law alleging that Aetna's public filings (and certain statements to the public) in 1989 and 1990 misstated the value of Aetna's mortgage loan and real estate portfolio.

I have been responsible for overseeing the defense of this matter, participating in major directional decisions regarding the handling of the case.

(a) The representation is ongoing.

(b) The case is being litigated before Judge Alfred Covello of the United States District Court for the District of Columbia.

(c) Counsel for plaintiff includes: Harvey Greenfield, 1370 6th Ave., 9th Floor, New York, N.Y. 10019, (212) 977-3610.

In additional to myself, defense counsel include John G. Harkins, Jr., Pepper Hamilton & Scheetz, 3000 Two Logan Square, 18th & Arch Sts, Philadelphia, PA 19103, Phone (215) 981-4000; Thomas J. Groark, Jr., Day, Berry & Howard, Cityplace, Hartford, CT 06103, Phone (203) 275-0100; Allan B. Taylor, Day, Berry & Howard, Cityplace, Hartford, CT 06103, Phone (203) 275-0100.

9. Withdrawal From Writing Private Passenger Automobile Insurance (Aetna Casualty & Surety Company v. Gailey & Commonwealth Automobile Reinsurers, (D. Mass. Case No. 90-11081MC)).

In 1989, Aetna decided to exit the private passenger automobile insurance market as part of an overall downsizing of the company's participation in that market. Because Massachusetts law, at that time, posed what appeared to be unconstitutional limitations on the Company's right to withdraw, the Company prior to my arrival filed an action seeking clarification of the law. Thereafter, the state changed the regulations in question permitting Aetna to withdraw from the market. The case was then settled in December 1990 and a stipulation of dismissal was entered in January 1992.

In connection with this matter I provided overall case management, as well as directional guidance in the settlement discussions. I also played a major role with senior management in helping them reach the decision to settle the case.

(a) The representation spanned the period from my arrival at Aetna to settlement of the action in 1991.

(b) The case was pending before the Honorable John J. McNaught.

(c) Additional counsel for Aetna included: James K. Brown, Foley, Hoag Eliot, Boston, Massachusetts 02109, Phone (617) 482-1390; Stephen B. Deutsch, Foley, Hoag & Eliot, Boston, Massachusetts 02109, Phone (617) 482-1390; Professor Laurence H. Tribe, Harvard Law School, 1525 Massachusetts Avenue, Cambridge, Massachusetts 02138, Phone (617) 495-4621. Counsel for defendants included: Thomas A. Barnico, Office of the Assistant Attorney General, 131 Tremont, Boston, Massachusetts 02111, Phone (617) 727-2200; Richard M. Brunell, Foley, Hoag & Eliot, Boston, Massachusetts 02109, Phone (617) 482-1390; Robert William Mahoney, Hale & Dorr, 60 State Street, Boston, Massachusetts 02109, Phone (617) 742-9100; Mark G. Matuschak, Hale & Dorr, 60 State Street, Boston, Massachusetts 02109, Phone (617) 742-9100.

10. New Jersey Automobile Insurance

I helped develop Aetna's approach to responding to New Jersey's 1990 enactment of the Fair Automobile Insurance Reform Act (FAIR Act). The Act provided, among other things, for acceleration of the transfer of drivers from the state-run residual market to voluntary market insurers and the assignment of residual market agents to such insurers. To assure appropriate application of the Act, Aetna filed in New Jersey's Appellate Division a challenge to an order of depopulation by the state insurance commissioner, which Aetna argued was inconsistent with the terms of the Act. Aetna also participated in a hearing before the insurance commissioner concerning the adequacy of Aetna's rates and the right to include certain items within those rates. It also argued in state court that the imposition of certain assessments upon the Company was inconsistent with the Act. Aetna prevailed on this issue before a lower state court and

an appeal of the matter is now pending before the New Jersey Supreme Court.

The following are published cases arising from Aetna's activities in response to the FAIR Act:

- a. Allstate v. Fortunato, 248 N.J. Super. 153 (App. Div. 1991), consolidating Aetna v. Fortunato. Court affirmed trial court's holding deeming rate filings complete.
- b. Matter of Aetna Cas. and Sur. Co., 248 N.J. Super. 367 (App. Div. 1991), certif. denied, 126 N.J. 385 (1991), cert. denied, 112 S.Ct. 1244 (1992). Court sustained in part and reversed in part Commissioner's depopulation orders, finding that orders were not consistent with the FAIR Act in significant respects.
- c. Matter of Commissioner of Insurance, 256 N.J. Super. 158 (App. Div. 1992), certif. granted, __ N.J. __ (1992). Court held Commissioner's MTF transition assessments invalid. The case was argued on certification granted by the New Jersey Supreme Court on January 4, 1993, and a decision is pending.
- d. Matter of Market Transition Facility, 252 N.J. Super. 260 (App. div. 1991), certif. denied, __ N.J. __ (1992). Court held that Commissioner is required to set MTF rates at break-even level. (Aetna is named as a party appealing the Commissioner's action, but has not participated actively in the appeal.)
- e. Matter of Private Pass. Auto Rate Rev., 256 N.J. Super.

46 (App. Div. 1992). Court affirmed in part, reversed in part Commissioner's decision on Aetna's private passenger automobile rate application. This case was subsequently settled.

Question 17:

Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Response to Question 17:

In addition to pertinent matters discussed in my answer to Question 16, above, I regard the following additional information as responsive to this question:

Office of Legal Counsel ("OLC")

My responsibilities at OLC included participating in most of the major functions of the office, including interpreting the law relating to the constitutional authority for, and the limitations on, the actions and programs of the President and his Cabinet. The significant matters in which I had responsibility also included counseling with the Attorney General and the Criminal Division on the interpretation of criminal statutes.

White House Counsel's Office

I worked at the White House on a variety of issues, including international and constitutional matters, as well as mediation of differences between agencies.

O'Melveny & Myers

During my tenure at O'Melveny & Myers, I also worked on the following non-litigated matters of significance:

a. E.F. Hutton & Co., Inc.

I worked with Warren Christopher in the representation of E.F. Hutton & Co., Inc. subsequent to a guilty plea by Hutton in a case brought by the Department of Justice. Over a two-year period, I was involved in a broad range of issues arising out of an inquiry by a Subcommittee of the House Judiciary Committee and inquiries by state regulatory and enforcement agencies.

b. Southern Natural Gas Co./Consolidated Gas Co./Columbia Gas Co.

I assisted Mr. Christopher in representing three United States natural gas companies in international negotiations with Algeria concerning contracts for the purchase and sale of liquified natural gas. My responsibilities included research into a variety of international law issues, the preparation of complex international agreements for the sale of natural gas, and consultation concerning negotiating approaches and responses.

c. United States International Trade Commission ("USITC") and Other Trade/Competition Matters.

During my years at O'Melveny & Myers, I worked on a variety of trade matters for clients of the firm, both domestic and foreign. My work included providing

advice and representation on antitrust, antidumping, and countervailing duty issues, as well as participating in Section 201 and other administrative proceedings before the USITC and other administrative agencies.

d. Independent Counsel Project

One of the pro bono efforts in which I participated while at O'Melveny & Myers was a joint project, undertaken in 1981 and 1982, with former White House Counsel Lloyd N. Cutler. The project involved assisting those in Congress seeking reenactment of the Independent Counsel Statute, and included development of amendments to improve the Act.

General Electric

During my years at the General Electric Company, I supervised a broad range of legal projects, including a variety of corporate, regulatory, criminal, antitrust, securities and international trade matters. I was also responsible for managing or overseeing major investigations of GE's business practices by public agencies in a number of cases. In connection with my responsibility for overseeing investigations of allegations of defense contract fraud and other related problems, I had a lead role in implementing a company-wide voluntary disclosure and contract compliance program. I was a leader in developing the Defense Industry Initiative On Business Ethics and Conduct, a program based upon voluntary disclosure and self-policing of potential violations. I spoke regularly to

industry groups in an attempt to develop broad industry participation in the Initiative.

While at General Electric, I also took a lead role in defining and drafting amicus briefs to the Supreme Court of the United States in support of positions of common concern to GE and to industry associations of which GE was a member.

Aetna

As reflected in my response to questions 15 and 16 above, during my career as Vice President and General Counsel, then Senior Vice President and General Counsel of Aetna Life and Casualty Company, my supervisory responsibilities have embraced a broad range of significant legal work on litigated and non-litigated matters. Since joining Aetna, I have also undertaken a major initiative to create a dialogue within the American legal community aimed at changing the approach to compensating lawyers and law firms. At Aetna, I have fashioned a program to compensate outside counsel in a way that creates economic incentives for efficiency and quality, matching fees to the value of services received.

The CHAIRMAN. Thank you, Ms. Baird.

The way we will proceed, ladies and gentlemen, is we will have 15-minute rounds of questioning by each member of the committee who wishes to ask questions. I want to make it clear, there is plenty of time, notwithstanding the fact that the President-elect would like very much to have the nominees for all Cabinet posts in place by his inauguration. That will not be the case here.

There is no reasonable prospect that we will vote on this nomination between now and the time the President-elect is sworn into office. There is no desire to prolong this hearing, but there is no inclination to move this hearing along when a single question remains to be asked by any member of this committee.

So we will proceed at a deliberate pace. I would also indicate that one of the things that will happen in these hearings, Ms. Baird, because we are able to get up on occasion and move out, on occasion you will find us trespassing on your physical constitution. I will try to be cognizant of that fact and we will take a break every now and then, just to give you an opportunity to get up and stretch your legs, so that you don't have to sit straight through.

We will go until 12 o'clock. I know there are a number of events that are taking place today. We will break from 12 until 1 o'clock, and then we will go from 1 until somewhere between the hours of 3 and 4, and we will make a decision then, the ranking member and I consulting our membership, as to whether we will reconvene on Thursday or the beginning of the following week. I do not want to convene on Friday and leave things unfinished going into the weekend. So we either finish or not. We will make that decision as the time permits and we see how far along we go.

Ms. Baird, I have a number of questions relating to the actual functioning of the office, from law enforcement to the anticrime agenda to the drug strategy, to health care, fraud, cooperation of the intelligence community, and others, all of which I will get to.

As you know from our first meeting, I have a fairly—well, I won't say fairly, I have a very strong view relating to the matter to which you spoke last, and that is the hiring of undocumented workers by you and your husband.

When we first met on January 5, following your being named by President-elect Clinton to be Attorney General, you volunteered this fact to me. You volunteered the circumstances under which this hiring took place, and you volunteered that what did take place was a violation of U.S. immigration law.

I have spoken to you at length about this matter, and you have been interviewed by the FBI and by the committee investigative staff under oath, and this matter is, as you know, a serious one in my view.

The committee and the public, as we have discussed, has to be assured that you are, without exception, going to be willing to enforce the law, and the immigration law falls under your responsibility. It happens on your watch as Attorney General. I believe it is important that you have an opportunity to explain in even greater detail than you have in your opening statement the various circumstances surrounding this hiring.

Now, let me begin my questioning, if I may, on this matter, and then when my second round is up, we will get back to those mat-

ters that have not been touched upon, and I expect everything will have been relating to the substantive operation of the Department.

When did you first hire the unauthorized workers?

Ms. BAIRD. In July 1990.

The CHAIRMAN. And who did you hire, Ms. Baird?

Ms. BAIRD. We hired a couple from Peru. I would rather not use their names, unless you feel it is necessary.

The CHAIRMAN. Well, it is not necessary. It is in the record, it will be a matter of public record. It is not anything we are going to hide, either, because, quite frankly, if they are still undocumented and they are still working in the United States, notwithstanding they are not in your employ, that is a violation of the law.

Let me ask you, in what capacity did the persons you hire work for you?

Ms. BAIRD. We hired the wife of this couple to be a baby sitter for our 3-year-old—then 8-month-old—son when I was starting a new job at Aetna. The husband did various work for us, much less regular specific work, and part of that included driving me on my hour-commute to Hartford, so that when I got home at the end of the day, I was free to spend my time with my son.

The CHAIRMAN. Put this in context for me, if you will, and for the committee. The hiring took place coincidental with your moving from one job to another, and your moving your place of employment from your home town of New Haven to Hartford, which is roughly an hour away, is that correct?

Ms. BAIRD. Right. I had been working before that at GE, which was closer to my home.

The CHAIRMAN. And the hiring of the undocumented workers, did that take place after or before an attempt to hire an American citizen or a documented worker? By documented, I mean the parlance that is often used that people understand is a noncitizen with a green card, meaning they are legally entitled to have gainful employment in this country. Did you attempt to hire someone who either had a green card or was an American citizen?

Ms. BAIRD. Yes. We had been looking for almost 2 months to try to find a suitable person to take care of our son. We required someone to live in, because of the long hours that were necessary. I was away from home about 12 hours a day, and because of the erratic schedule my husband had, we had placed advertisements. In fact, in those advertisements, we had said that we wanted a U.S. citizen or someone with a green card only. We had contacted a large number of employment agencies and had been unable to find someone who had experience in child care who we had confidence would provide stable care for our child.

The CHAIRMAN. How did this couple come to your attention?

Ms. BAIRD. Through an agency.

The CHAIRMAN. Through an employment agency?

Ms. BAIRD. Yes.

The CHAIRMAN. Now, prior to hiring the couple, what did you know about their immigration status? Specifically, did you know that either of them had a green card authorizing them to work in the United States?

Ms. BAIRD. We knew that they did not.

The CHAIRMAN. Did you know when you hired them that the employment of an immigrant who did not have a green card was a violation of the U.S. immigration laws?

Ms. BAIRD. Yes.

The CHAIRMAN. Did you or your husband seek legal advice on this issue?

Ms. BAIRD. Yes, we did. Before we hired them, my husband contacted lawyers to determine if there was a process that we could use to hire them.

The CHAIRMAN. And was the process, as explained to you, one that was antecedent to your ability to legally hire them and be in compliance with the law? Or what did the lawyers that you or your husband consulted tell you and/or your husband relative to the legal status of your ability of hiring them? Did they say that you can go ahead and hire them and get in process the application for a green card and it is all right? What did they tell you?

Ms. BAIRD. Well, I don't want to say this to excuse what we did, but I will tell you what I understood, and my husband was the one who talked to the lawyers, so I don't—again, I don't say that to distance myself, but just to be accurate.

I had started a new job. It was his summer vacation and he took over the responsibility of finding child care—

The CHAIRMAN. Your husband is a professor at Yale University Law School?

Ms. BAIRD. Yes, that's right. What we understood the lawyers to be saying—and we have made public a letter from one of the lawyers we consulted—what we understood was that the lawyers said that it was—and I would quote—"a technical violation of the law to employ someone who was undocumented," but that this was not perceived as an enforcement matter by the Immigration Service, that there was a process that we could use, a legal process where we would disclose to the Labor Department and the Immigration Service that we had the undocumented worker in our employ, that this undocumented worker was living with us, and that ultimately this worker would get these papers based on the certificate of need that the Labor Department issued that we had the need for this person.

Now, I say this again to answer your question, but I don't want you to think I say this to excuse this. In my hope to find appropriate child care for my son that I could have confidence might give him some continuity, I gave too little emphasis to what was described to me as a technical violation of the law and was too willing to lean on the rest of what we were told about the disclosure process and the ability to clarify the situation with the Labor Department and the INS through the sponsorship process.

The CHAIRMAN. So if I can characterize it, you said you and your husband knew at the time these people came into your home and accepted their first paycheck from you, that you were violating the law, and you knew that the violation, there was no question about the violation, that there wasn't anything that you could do short of them actually having a green card, that would entitle you under the law to hire them.

But what I understood you just to say was that, because of your need, you rationalized to yourself that it is a technical violation,

that it is enforced only in the breach and that, in time, by going through the process, you would be able to make this right by them getting a green card. Is that what you are saying to me or—

Ms. BAIRD. Well, I allowed myself to think that the processes set up by the Labor Department and the INS gave tacit approval to this sort of situation, which I can't condone now.

The CHAIRMAN. Of the couple that was in your employ, did you file the so-called I-9 form, attesting to the citizenship of an employee, as required by the law, Federal law?

Ms. BAIRD. No, I actually don't believe the forms were required to be filed. I think it is required to be held by an employer, and we did not do that.

The CHAIRMAN. As I understand it, you have employed other domestic help to help raise your child, both before and after this couple who were undocumented. Did you file the requisite I-9 forms for these individuals?

Ms. BAIRD. Yes.

The CHAIRMAN. Did you file any other documents with the Federal Government disclosing your employment of the couple in question, the undocumented workers in connection with their authorization to work?

Ms. BAIRD. No, I don't believe so.

The CHAIRMAN. You indicated you filed with the Department of Labor a certification application with the INS, an application for a green card, is that correct?

Ms. BAIRD. Yes.

The CHAIRMAN. When did you file the Department of Labor form? As I understand it, the way this process works is that if you want to hire—if any American citizen wishes to hire an undocumented alien, they are not entitled to hire them until they have a green card, but there is a process whereby you can make a case for them to get a green card. You file a certification form with the Department of Labor asking them to certify that you have tried to hire an American citizen for this job and none was available.

If they certify that that is correct, then the next step is to go forward with the INS and seek, in effect, an application saying I have been certified by the Labor Department that the people I wish to hire or the persons I wish to hire are in fact needed by me, I cannot find an American citizen to do the job and we are now asking you to—we want to sponsor these people to get a green card so they can then become legal in the sense of being able to work for us and meet the requirements of the Federal law.

Did you go through that process?

Ms. BAIRD. Yes, that's an accurate description of the process, and we went through the process.

The CHAIRMAN. When was the Department of Labor form filed? You hired these individuals, they began to work in your employ, if I am not mistaken, in July 1990, is that correct?

Ms. BAIRD. That's correct.

The CHAIRMAN. If you recall, when—and please feel free to consult any notes or counsel, if you like, because these are a lot of dates and I don't expect you to know all of them off the top of your head, but—

Ms. BAIRD. By now, Senator, I am pretty familiar with them.

The CHAIRMAN. Then tell me when did you or your husband, whomever had the allocated responsibility within the family unit, when was the form required filed with the Department of Labor which essentially says we can't find anyone who is an American citizen, we want you to tell us that it is OK for us to make an application to sponsor people who in fact are not American citizens, because of the need we have. When did you file that form?

Ms. BAIRD. The form was filed by my husband, actually by the lawyer for my husband in July 1991, 1 year later. In the intervening period between the time that we hired the couple and the time the form was filed, my husband and the person who was caring for our child was in the process of consulting with lawyers, with collecting documents from Peru, all of which was fairly time-consuming. But I must say that if I had handled the process myself, I would have pushed to make it more expeditious, and I should have been having more conversations with my husband about it.

The CHAIRMAN. But all this time you had no doubt that there was a violation of the civil law, that these people were not under the law entitled to be in your employ, is that correct?

Ms. BAIRD. That's right.

The CHAIRMAN. Now, let me ask you, so it was a year later before the form was formally filed with the Department of Labor seeking a certification of need. Was this application approved by the Department of Labor?

Ms. BAIRD. Yes. The way the process works and the reason that it took so much time—and I must say that even if I had been pushing my husband harder on this or doing it myself, it probably would have taken 8 months, instead of a year, to file the form—but the reason that it took so much time was there was a great deal of documentation that has to be collected before one can file.

The documentation shows the qualifications of the worker for the job, and in this case, because she was from Peru, she needed to obtain a lot of documents from Peru, which is a country in some chaos and it was difficult to get them. Her employers had to verify her employment, she had to get birth certificates, records from the school she had gone to, that sort of thing. That information is part of the process.

The second part is that through the employment office in the State and through advertising, the responses to which go back through the State unemployment job service, we advertised the job and posted the job with the job service, and this was after we filed the form with the Labor Department, and there was not a single response to the ads placed or response from the job service, from anyone who wanted the job.

The CHAIRMAN. In effect, the Labor Department requires you not only file this form, but after the form is filed, that you demonstrate to them by seeking American citizens or someone with a green card to do the job for which you wish to hire, in your case had already hired undocumented workers—

Ms. BAIRD. Yes.

The CHAIRMAN. And you went ahead and did that, and no one responded?

Ms. BAIRD. There were two people who responded, apparently neither of whom wanted the job.

The CHAIRMAN. Now, let me ask you, after you got the certificate of need or whatever the term is, after the Labor Department certified—

Ms. BAIRD. The certificate of need, I believe.

The CHAIRMAN [continuing]. Certified the need, the next step was to file with the Immigration Service, the so-called INS.

Ms. BAIRD. That's correct.

The CHAIRMAN. Now, when did you do that? Was that done contemporaneously?

Ms. BAIRD. No; the Labor Department certificate of need was received in, I believe, it was April 1992, and at that point in time the husband of this couple had left the person who was caring for our child, he left in March, their marriage had split up, and I will say that, as I am sure as anyone who has gone through that kind of separation, it is difficult in your own family, but it is very difficult to have a separation like that in one's household. She was obviously very disturbed by it, and my husband and I spent probably all of our personal time trying to help her pull herself back together, and my husband's focus was not on paperwork.

Now, he filed the form with the INS, which was the next step in the process, I believe the following October, and as I understand it, that was not a date of significance to when she would be eligible to get her green card, that her place in line, if you will, or her priority date had been established by the Labor Department process and the timing there.

The CHAIRMAN. What were you told her place in line was at the time? Once this certification of need was approved, was granted—she, the woman helping with your child in the child care was then put in line as an applicant to get a green card, to be able to legally work, what were you told once she was put in line? What did your lawyer or anyone else tell you, it would be a matter of days, weeks, years, months?

Ms. BAIRD. My understanding is that it varies, depending on the places that are available for people from the particular country, but that it would probably be 2, maybe 3 years that she would be waiting for this green card.

I will say about this, again not to excuse myself, but it is part of the reason that it seemed to me at the time that the whole process was one designed where the Labor Department and the Immigration Service recognized that someone for whom one had applied was acknowledged to be working for you in the meantime, because it seems inconsistent to think that someone would apply for a child care worker, knowing that they wouldn't be able to come to work for them for 5 or 6 years.

So it just seemed to me that the process that was set up—again, I don't say this to excuse it, I am just trying to explain to you how I was thinking about it at the time when I was facing this dilemma of trying to care for my child—it seemed to me that the process that was set up was one where, when the Government invited—well, invited is not the right word, but when the Government allowed one to come forward and say that I have this need and this person is working for me now and I am telling you openly, that the process acknowledged that this person would be working during this period of time, not only once they obtained the green card. I

clearly was wrong about this, as I look back at this, but I wanted you to understand that.

The CHAIRMAN. It is amazing, the ability of the human condition to rationalize, to justify what you know is not right.

Let me ask you, when you said that the Immigration Service or, in this case, the Department of Labor knew they were working for you at the time you made the application, was that because it was expressly stated by you to the Immigration Service, or because you listed as their address your home?

Ms. BAIRD. No; my husband expressly stated that he was the employer of this worker and he expressly stated what her immigration status was.

The CHAIRMAN. What were the conditions of employment with this couple? For example, did you have an agreement as to salary or hours of work, overtime compensation, or other conditions of employment?

Ms. BAIRD. We had an agreement, an oral agreement as to salary. We paid them on a salary basis. In addition to the salary—we paid their salary at the prevailing wage in our community for this kind of work, a wage comparable to what we had paid before that and what we pay now. We provided them with all their room and board, 2 weeks paid vacation, 4 paid holidays. We gave them a significant Christmas bonus every year, and tried generally to help them advance their lives so that they would have a better future after they worked with us, as well.

The CHAIRMAN. Let me ask you, at any point was there a written employment agreement?

Ms. BAIRD. There was as prospective written employment agreement as part of the Labor Department process.

The CHAIRMAN. As I understand it, you filed such a written employment agreement with the INS. Is that correct?

Ms. BAIRD. I had thought it was with the Labor Department, but it may have been with the INS.

The CHAIRMAN. It was with the Department of Labor you filed?

Ms. BAIRD. That is what I thought.

The CHAIRMAN. It is my mistake. Now, did the couple work overtime for you?

Ms. BAIRD. They worked very flexible hours. They may have worked or one of them may have worked an evening, but then took time off during the day. Sometimes they had personal things that they needed to do together or separately. My husband, being a professor, was able to take my son, if they had something they needed to do, or sometimes took my son just because he wanted to take him to school with him. So their time was flexible. It was not a relationship where we were keeping punching a clock or paying overtime in that sense. We really tended to make up for extra time that they spent by their taking other time off.

The CHAIRMAN. At the time you hired the couple, what was your understanding of your obligation concerning the withholding of Social Security and unemployment taxes?

Ms. BAIRD. We believed that Social Security taxes needed to be paid and we tried to find a way to pay them, even though they didn't have Social Security numbers. We talked to the lawyer several times about this. We made suggestions of our own. He told us,

told my husband that it was not possible to pay the taxes until they had Social Security numbers. We suggested things like setting up an escrow account. We tried to find a way that we could pay these taxes and were told that we couldn't.

We did keep records, so that when they got Social Security numbers, we would be able to pay them. We did not pay in cash. We kept records. Nevertheless——

The CHAIRMAN. You paid by check?

Ms. BAIRD. We paid by check and we kept records of all we paid, including bonuses and that kind of thing. Nevertheless, we should have paid the taxes then. Now, when we became connected to the transition operation, one of the transition lawyers said that there was a way we could pay the taxes, and so we did go ahead and pay the taxes, with interest and penalties.

The CHAIRMAN. Had you previously withheld or are you now withholding taxes for other people in your employ performing a similar function?

Ms. BAIRD. Yes.

The CHAIRMAN. Did you or your husband receive—well, you have answered that, actually. The advice from the first lawyer, was that you could not pay, as a practical matter, but when you got down here, the transition team lawyers told you that you should have and could have paid these withholding taxes, is that correct?

Ms. BAIRD. That's right.

The CHAIRMAN. Have you now paid these taxes?

Ms. BAIRD. Yes.

The CHAIRMAN. When?

Ms. BAIRD. We paid them probably the beginning of January. I could check the date for you.

The CHAIRMAN. As I understand it, the INS has served on you a notice of intent to fine concerning your employment of this couple. Is this matter resolved?

Ms. BAIRD. It is resolved. We paid the fine immediately.

The CHAIRMAN. And what was the fine for? What did the INS fine you for?

Ms. BAIRD. They fined us for employing someone who didn't have papers and failing to have the—I believe it was the I-9 form.

The CHAIRMAN. Did the fine include a statement that you willfully and knowingly violated the law?

Ms. BAIRD. I believe that it was for knowingly employing these workers. I don't believe it said knowingly violating the law. I don't try to distinguish that. I just am trying to be precise.

The CHAIRMAN. I just want this record to be as clear as possible. The point of my question is obvious, that the INS did not fine you for inadvertently not filing a form. They fined you for knowingly, they concluded you knew it was against the law to do what you did, and you went ahead and did it and they fined you for knowingly having done that, is that correct?

Ms. BAIRD. The civil penalty that the INS asked us to pay, the \$2,900 civil penalty, was for knowingly hiring these individuals who didn't have papers and for not filing the forms.

The CHAIRMAN. Again, for the record, at the moment, the first day that both of these people ended up in your household, the first paycheck that was handed to them, both you and your husband

knew at the time that that was a violation of the Federal immigration law, did you not?

Ms. BAIRD. We did, that's right. I explained to you that it had been described to us as a technical violation and that there was a process we could use to regularize the situation, but I don't say that to apologize for it. I just tell you to, again, give you the full picture.

The CHAIRMAN. Let me ask you, speaking for myself only, it is my impression that it is not just me, but a significant portion of the population that finds your action and the action of your husband to be on its face inconsistent with the responsibilities that you will have as Attorney General of the United States to enforce the very laws you knowingly violated.

Do you have any sense of the feeling of frustration, in some cases anger and outrage that many of the people who have contacted us, and I suspect a significant portion of the American population have, about the actions taken by you and your husband, acknowledging it is a civil penalty, it is not a criminal violation, a civil violation? Tell me in your own words whether or not you have a sense of—what you think people who are upset about this are feeling?

Ms. BAIRD. I think that these people are fairly questioning whether there are classes of individuals who hold themselves above the law, and I assure you I do not. I think that it is wrong for this Government to give any impression that there are classes of people who hold themselves above the law, and I certainly would intend, if I am confirmed, to assure people through the actions of the Justice Department that that Department does not treat people differently based on their class, their lifestyle, their accessibility to people in power.

I will tell you, nevertheless, that I did not intend to do this in a way that has reflected on me as this issue has. I did not give adequate attention to the situation. I have told you that I have made a mistake, that I was wrong, that I did not adequately perceive the significance of the matter here, or I allowed myself to be more concerned about the difficulty we were having in child care than I was concerned about this situation.

Quite honestly, I was acting at that time really more as a mother than as someone who would be sitting here designated to be Attorney General. But I do think that the concern expressed is very valid, and I understand it. And I think if I am confirmed, I will have to work very hard, and would intend to work very hard to give those people the confidence that they deserve in the fairness and even-handedness of the justice system, and that includes everything from small civil penalties to major crime.

The CHAIRMAN. I am happy to hear you say that, quite frankly, because there are some, as I have suggested, who have indicated that this is not a big deal, this is like a parking ticket. To me this is a big deal, personally, and I suspect it is to a lot of Americans. But if you had not done what very bluntly you did, I would unquestionably oppose you.

You did not come in here and say that my lawyer told me to do it, my lawyer said it was all right. Your husband is a leading constitutional scholar in America and should know better and did know better. You are a leading lawyer. You are a person of signifi-

cant academic and professional accomplishment. I just tell you very bluntly, had you come in and suggested that you listened to your lawyers' advice and that is the reason you did what you did, I would certainly be opposed to you. And you did not come in here and suggest that your behavior is one that is in any way justifiable. You have given us your rationale, your state of mind at the time.

I, for one, do not know exactly how I am going to deal with this. I have trespassed on the time, and I thank my colleagues for letting me continue this line of questioning. I have other questions on this matter, but it is, quite frankly and quite bluntly, very important to me that you are not making excuses. You have made explanations. You have given us explanations as to your state of mind and your thinking at the time.

But let me ask you, once and for all, had you to do this again, irrespective of your being nominated for this job, do you understand that the vast majority of the American people have similar needs? As a single parent for a period of time, I understand the need for child care. There are tens of thousands, millions of American out there who have trouble taking care of their children, both spouses required to work or single parents, with one-fiftieth the income that you and your husband have, and that they do not violate the law, they do not do what anyone out here could do. There are tens of thousands of people trying to get into this country, who come into this country under almost any condition. You are aware of that, aren't you?

Ms. BAIRD. Yes.

The CHAIRMAN. Well, I thank you for your answers. I have many more questions.

I thank my colleagues for their indulgence, and I will now yield to Senator Hatch.

Thank you, Ms. Baird.

Senator HATCH. Thank you, Senator Biden, Mr. Chairman.

Can you hear me all right?

Ms. BAIRD. Yes.

Senator HATCH. I hate to say this, but sometimes Mr. Bumble is correct, sometimes the law is an a-s-s, you know. Sometimes these laws are very difficult to comply with, and I take it that neither you nor your husband are immigration lawyers or specialists?

Ms. BAIRD. That's right, we are not.

Senator HATCH. Not many people are. Like Senator Biden, I can't condone the breaking of the law, no matter how innocently or no matter how much I may or may not agree or disagree with the law.

But I have to say, as I have listened to your testimony, neither of you are immigration lawyers, neither of you have had any experience with these laws, and neither have a lot of other people. You did try to comply. You went to an attorney. You did file written documents with the Department of Labor and you were sponsoring these people, in essence, and pushing toward their getting a green card. Is that a fair statement?

Ms. BAIRD. Yes, that's right.

The CHAIRMAN. Excuse me. You, though, never at any time had any doubt that what you were doing, notwithstanding your extra efforts, was a violation of the law, did you?

Senator HATCH. She made that clear.

Ms. BAIRD. That's right.

Senator HATCH. She made that clear, and I think, like Senator Biden, I appreciate that you made it clear. And I appreciate your openness with me during those very difficult days when you disclosed this with me on a number of occasions and discussed it thoroughly with me.

I only have one other thing. I think you have put it behind you. I think it was clearly a mistake. I choose to accept your explanation that it was an honest mistake, although you knew that it was a violation and that you were trying to rectify and make it right, and you now have rectified the problem and straightened it out, and I accept that.

I also have to look at your overall reputation and what you have done with your life and the service that you have given not only to your country, but in the private sector, as well. And I have to say that you are indeed a very competent and qualified candidate for Attorney General of the United States, and I intend to support you and I will support you.

I just hope that this experience will benefit you and everybody with whom you work as to the very many difficulties that the average citizen in this country really has sometimes with the law, and that you will strive to get U.S. attorneys who basically are not using those positions for political purposes, but recognize some of the problems that average citizens have in this society today, in this complex legal-ridden society.

I agree with Senator Biden, child care is a very, very important issue in this country. It was only a year or so ago that we passed a major child-care bill. There are millions of single heads of households, men and women, but mainly women, who are in despair over what to do about their children and can't work, because they can't find somebody to take care of their children or can afford to do so. There is a lot more to this than the violation of what is an important law, but nevertheless a technical law as well.

So I accept your explanation. I don't think it should disqualify you, and I think anybody who argues that it should is being hypertechnical themselves. You have admitted your mistake. You have admitted the difficulties involved with that mistake, and I personally take your word for it.

Now I'd like to move on to some other subjects. The first freedom mentioned in the Constitution of the United States and the Bill of Rights, if you will, is religious freedom. In 1990, in the *Oregon v. Smith* case, many of us believe that the Supreme Court seriously impaired that freedom. As a result of that decision, a State or Federal Government need no longer have a compelling interest in order to justify a burden on the free exercise of religion.

This test was very protective of religious exercise, that is, the compelling interest test, especially for religious minorities in any community. In *Smith*, the majority of the Court basically said the Government only needs a rational basis for burdening the exercise of religion with the law of general applicability.

I'd like to know what your view is of the rationale of the majority opinion; do you believe that the compelling interest test rather than the rational interest test is the proper one under the free exercise clause for religious freedom?

Ms. BAIRD. Senator, I think this is a very important issue and one that I know both you and Senator Kennedy and others on this committee feel very strongly about. The *Oregon v. Smith* decision has raised the concern of many different religions that their practices will somehow be examined by the State in a way that has not occurred before. The compelling interest test gave strength to people's feeling that the State would not lightly examine, not just interfere with, the practices of religious groups.

I, in my first substantive answer to a question, probably shouldn't be going out on a limb in an area where President-elect Clinton hasn't spoken, but—

Senator HATCH. But he has spoken; he said that he supports this.

Ms. BAIRD. Yes, he has said that he supports it and thinks that it is a very good idea. And I'll go out on a limb here a little bit further and say that I think it should be one of the highest priorities in the early days of the administration because I think that there is an anxiety now that really just need not exist, that States will, as I say, examine as well as potentially regulate the practices of various religious groups, and particularly religious minority groups in different communities.

Senator HATCH. Well, thank you, because I really feel very deeply about that as do most religious people in this country. And since it is the first right mentioned in the Bill of Rights, I don't want it given short shrift by the courts, or by us in the Congress, or anybody else for that matter.

Now let me just shift to a few questions about crime and about how you are going to approach the problems there. How is the Clinton administration—if you feel that you can disclose this at this time—going to address rural crime in America, because many of our States are beset with rural crime, as well as the urban criminal problems that many of us face throughout the country.

Ms. BAIRD. As I said in my opening statement, violent crime in this country is a pervasive problem and one of the highest priorities of this administration. It is a quality-of-life issue, and as someone who grew up in a small town, I can appreciate that the transformation of the quality of life in rural communities has also been profound over these last couple of decades, particularly the last decade.

Where I grew up in Boffa, where Senator Murray discussed this small town with a 2-block-long main street, no one ever locked their doors; in fact, I don't think we even had sound locks on our doors. But I know that today, that is not a comfortable situation for people all over the country, because crime is ever present, and it is something that we as a Federal Government have a tremendous responsibility to get at with the local community police forces.

As Senator Biden mentioned, one of the first groups that I met with were representatives of law enforcement from all over the country—cities, small towns, State troopers, urban policemen, rank and file, management—a really broad range. I am very honored to say—and I thank them for doing this even after this immigration issue became an issue—I am very honored to say that the heads of all of these major police organizations have endorsed my nomination to be Attorney General. And I trust they have done that be-

cause they appreciate that I am committed to high-priority attention, creative programs, sound management to get at the issue of crime in communities of all sizes.

I think it has been one of the most profound effects on the quality of life for people of this country. And economic security only goes so far, but even if people have a good job, they cannot be comfortable and satisfied as citizens of this country if they are afraid to walk the streets at night or feel that their children cannot play outside.

Senator HATCH. I commend those law enforcement people for being willing to openly support you. But I want to see the Federal Government play closer attention to the concerns of States like my own State of Utah. Nationwide in 1991, the figures show—FBI figures at that—that violent crime rose 35 percent faster in rural counties than it did in America's eight largest cities. And it is a matter of great concern to me.

Sometimes the headquarters of Federal agencies here in Washington downplay the problems of violent crime and drug dealing in States like my home State of Utah. Yet we have youth gangs coming into our State, mainly from Los Angeles and elsewhere; drug traffickers, who are not only using Utah as a transshipment point, because it is the crossroads of the West, but more of them are trying to peddle these drugs throughout the State as well. So I want to work with you in addressing this growing problem. It is a serious problem, and I know you take it seriously as well.

Ms. BAIRD. Yes, and I look forward to that.

Senator HATCH. Thank you.

Let me ask you for your thoughts about one aspect of President-elect Clinton's campaign promises in the area of anticrime efforts. He promised to put 100,000 new police officers on the street to fight violent crime. We naturally have to take a look at the details, of course—

Ms. BAIRD. Do you mean streets don't sound very rural; is that it?

Senator HATCH. That's right. But can you assure me that rural States like Utah will get their fair share of any of these resources that might be put out by the Clinton administration?

Ms. BAIRD. It is an excellent point, and as I have said to the heads of the police organizations, we need to work together to try to identify the areas of greatest need. Our hope in such a program would be to work closely with the members of this committee and with the members of the law enforcement community to develop a program to implement the commitment to 100,000 more police on the streets in a way that attends to our greatest problems. And I appreciate that we should be working with this committee to identify where in these rural and less populated areas, this commitment to put 100,000 more police on the street may also be useful.

Senator HATCH. There are many other questions about criminal law and the approaches that the Clinton administration might take and that your leadership might provide that I have, but I am going to pass over those at this time and just move to another subject.

In 1991, Congress amended title VII of the Civil Rights Act, which bans racial, ethnic, and gender discrimination in employment. Indeed, Aetna, the company you currently serve, has been

subject to the amended title VII while you have been general counsel there.

Do you view title VII as amended by the 1991 legislation as a mandate for proportionality in the work force?

Ms. BAIRD. The answer to that is that I view the act as a stronger commitment to the rights of those individuals covered in the work force. Adopting a word such as "proportionality" to the extent it looks like quotas, I would say no. I think that there is place for affirmative efforts where there has been past discrimination or where there is a distinctive need for diversity, but I would not want to suggest that in any way President-elect Clinton or I will be searching for quotas.

Senator HATCH. Well, I'm glad to hear that, because Congress worked very hard to avoid that interpretation or any interpretation that the law applies proportionately, including sustaining a veto of one version of the bill on that very point.

Ms. BAIRD. I will add, Senator, that my experience as a woman in business, I think, makes me distinctively able to understand how women can better advance in business, and I would hope that I could bring to this task for women, minorities, and the disabled an ability to substantially improve their status in the work force without there being a need for quotas.

Senator HATCH. I appreciate that, because equal opportunity for individuals remains the touchstone of title VII, not equal results for groups. And I have some real difficulties when we start pushing toward just pure equal results rather than equal opportunity in the law.

Now, Ms. Baird, you coauthored an article—I think my time is just about up. Rather than ask any more questions at this point, let me just commend you for being willing to serve in the Government. There are a lot of people who aren't willing to go through what you are going through. There are a lot of people who aren't willing to make the disclosures. There are a lot of people who just, plain don't want to go through the hassle or the bother. There are a lot of people who don't want to face the media. There are a lot of people who don't want to face some of the really dirty and downright dishonest things that happen around this town. And there are a lot of people who just don't want to go through the pain of the extra effort, because anybody who works in this position as Attorney General knows it isn't a 9-to-5 job. It is a very, very difficult job. You are the mother of a 3-year-old child, and frankly, I commend you for being willing to take on this responsibility, to basically allow yourself to be exposed to the American people in the fullest sense, and filing all the forms and other things that you have to do. And I personally commend you for being willing to get in the battle and to try and uplift and augment and solidify the rights of people all over society.

I am convinced, having chatted with you, that you are going to make an excellent Attorney General. I will have some other questions, but basically I appreciate your candid answers this morning, both to Senator Biden's questions—you answered those very candidly, as you did to me on the phone—and I have great respect for you because of that, plus all of the other things that have made you the great person you are.

Thank you.

Ms. BAIRD. Thank you.

The CHAIRMAN. Thank you very much, Senator.

Senator Kennedy.

Senator KENNEDY. Thank you very much, and welcome, Ms. Baird.

As you mentioned to the chairman of the committee, you have indicated that you understand that the law was violated, and you have accepted responsibility for your actions. You said that the actions that were taken were inappropriate. And I thought that in response to the Chair's general statement regarding the anxiety that people have across the country, you made a very forthcoming statement. But I think there are millions of Americans who wonder whether this is a matter of sufficient importance that it should disqualify you for the job. And I think it is really against that that much of this hearing is focused.

My own sense is that part of the extraordinary frustration out there across the country is, as you mentioned in your earlier statement, results from the fact that the American people really don't perceive the Justice Department as being on their side, and they don't really believe that equal justice under law is a reality.

I think most middle-income families don't believe that the Justice Department has really been looking out after their interests, and certainly the poor don't really think that it has been looking after their interests.

Most of the minorities in this country feel that white people get a much better break from the Justice Department and our judicial system than black people get. And most people feel that women don't get nearly the break in our justice system as men get in our justice system.

So people are really wondering, against this background, whether we have here someone who is going to change the Justice Department, or whether this is going to be a continuation. And what they are looking for is equal justice under law, which I believe means that the Justice Department is going to do something about violence in this society, that it is going to try to do something about our communities, which are free-fire zones.

We welcome your statement about the Brady bill and a time period for the purchase of handguns. We wonder whether there ought to be a similar time period in terms of purchase of automatic weapons that are being used, used recently in the Berkshires in my own State by a mentally disturbed young person who went out and completely, in a very lawful way, purchased an automatic weapon and then went out and shot some of his fellow students.

We wonder whether we are going to have a legal services program that is worthy of its name. We take note that you served on the advisory board for a period of time of a legal services program, and we know that the President-elect and Mrs. Clinton have had a long and continuing commitment to legal services.

The best estimate is that of the needy people in my own State of Massachusetts, only 15 percent of them have their legal needs attended to. And there is a lot of agony out there among people who say that this Justice Department, this legal system, isn't serving their needs.

It is against a background in which we have seen in the last 10 days where women in our society, who have a constitutional right to reproductive choice, have seen in recent years a diminution of that right, and have seen the Supreme Court in the past few days in the *Bray* case effectively deny them in many instances the ability to exercise that particular right because of obstruction of medical facilities.

And it also means a Justice Department that is going to restore its integrity and its honor. It means an Attorney General who is going to recommend judges who are committed to fairness and equality of law for all citizens, and Supreme Court Justices as well.

And in looking back over some of those matters that are frustrating so many of our fellow citizens, we have to take note of your own background and experience, your extraordinary legal ability, your government experience, and your understanding of these institutions, your extraordinary management skills and effectiveness, and over a long time, a very deep commitment to constitutional principles. That is certainly something that I find enormously constructive and positive.

And, many of us see out there the kind of concern and real frustration and pain being expressed, because as you point out, people don't want individuals who are above the law, but also because they just have not felt that the Justice Department has been on their side.

So I would be interested in your own view as to how you are going to try to make the Justice Department be on their side, for those people who have, over the period of recent years, been left out and left behind.

Ms. BAIRD. Senator Kennedy, about 10 years ago, I wrote what I then thought was a modest article in a legal newspaper, advising the Attorney General entering with President Reagan to focus on this very issue; that it was critical as he came in as the friend and personal lawyer for the President that he take strong steps, such as some of those I have described in my opening remarks that I would intend to take, that he take strong steps to make it clear to the American people that the Justice Department would not be political, would be even-handed, and would look out for a broad range of people in this country, including those who have the least.

I don't want to say I have anticipated some of this loss of public confidence, but I at least recognized how tenuous it was and how critical it is for the Attorney General to make it very clear in actions as well as words that that Department not be subject to political pressure and not think of only a small class of people as the people it represents.

I would intend as Attorney General to take steps like making public to the press all phone calls and visits I have from anyone, whether it is the President or someone from a public interest organization, so there is no question that I am listening to people without informing the public who I am listening to.

I would be very careful about making public in appropriate circumstances any decisions I make to reverse the professional career staff decisions about cases and other matters in the Justice Department in order to, again, take action, not just in words, say to the people of this country that I consider myself accountable to them

for the decisions made by the Department that might look like they were made for political purposes rather than for the prosecutorial judgment or other judgments of the career staff.

I also think—and this is something that I would hope to work very closely with you on, and others on this committee—I also think this Department needs to reinvigorate its role in the legal services provided to people in this country who can't afford to go to court. And I did, as you noted—I have been serving on the board of the organization that supports the legal services program in our community in New Haven.

I will tell you also that I am very honored that the legal department that I run at Aetna has a very active and vital pro bono program and in fact has for some years now been running Connecticut Legal Aid to the Elderly out of our legal department.

Now, there is one thing about that that is very good and one thing about that that is very bad. The thing about it that is very good is that we have a corporate legal organization providing its support to run a legal services program, and that is something that as Attorney General, I would like to try to see happen all over this country. The bar has in many places lost sight of the central role of pro bono activity, but particularly in corporate legal organizations, there is a great deal of service that we ought to be able to generate to the people of this community who can't afford lawyers.

The bad part about this is that this program only serves elderly who have an income of \$10,000 or less as an individual; a little more for couples. That is a very small segment of the people of this country who need legal services and can't afford them. We talk about health care costs being out of control, but in fact legal costs exceed what an average individual can pay to vindicate their rights, even if they are talking about smaller matters like landlord-tenant disputes, which is where a lot of legal service activity is, keeping people from being kicked out on the street.

So I think this is an area that the Justice Department needs to devote real attention to, in order to make real the notion of justice for all, and I say this in terms of my human commitment, and I say this in terms of my sense of how to manage this Department. We need very strong leadership in this Department and a strong commitment to moving the rights to which we aspire into reality, and that includes helping people have good lawyers so that they can vindicate their rights.

Senator KENNEDY. Before going into the area of legal services, I do want to indicate that I think you have reminded the country—and certainly you hadn't intended to—about our needs in terms of child care. Comments have been made about it during the course of this hearing. I would say with all respect that the child-care program that we passed a little over a year ago is totally inadequate—totally inadequate—in terms of affordability and accessibility and assurances in terms of child care. Through our Labor Committee, under the leadership of Senator Dodd, we were really unable to make more than a kind of downpayment for it, for which working families understand there is such an extraordinary need. Three-quarters of mothers in this country are searching for some kind of help and assistance in terms of child care. More than half of fa-

thers who are heads of household are depending on it. And it just is not available. It just is not available.

We are attempting, in reviewing the immigration laws, to try to make some kind of judgment about what is appropriate in terms of permitting some from overseas who do have some qualifications for being part of this system—but also, at the same time, will not open the floodgates—a way of gaining entrance here to the United States. Under the immigration bill that passed a little over a year ago, we have a continuing commission chaired now by Cardinal Archbishop Law and made up of some very distinguished experts in immigration policy that intends to give us some guidance and advice in this particular area, and we expect that report within the next year.

Finally, in the time remaining, you have mentioned the Legal Services Program. I understand you will work with us on a reauthorization bill for the Legal Services Program and that you will also review and at the earliest appropriate time make recommendations for the completion of the Legal Services Board.

Ms. BAIRD. That's right.

Senator KENNEDY. And do I further understand that you will make every effort to ensure that we will have adequate funding for that program?

Ms. BAIRD. Yes; I think we need to work together on this to really reinvigorate the Legal Services Corp. and other ways of making sure that people have access to lawyers.

Senator KENNEDY. I think the record in terms of tenants' rights, foster home care for needy families, and in a wide variety of other areas has been really extraordinary.

Let me finally ask your impression of the Supreme Court decision last week in the *Bray* case. The Court held that Federal civil rights laws do not prohibit violence against abortion clinics and their users. Have you formed any impression or any position with regard to what the Justice Department is going to recommend to us in terms of legislation to deal with that issue?

Ms. BAIRD. Senator, that is something that I want to look closely at, but it is clear that we need to try to find ways to, again, allow people to take advantage of their rights and not have demonstrations at abortion clinics preclude people or create fear in the exercise of those.

The question there is one that we need to look carefully at, because we obviously don't want to interfere with first amendment rights. On the other hand, the first amendment recognizes the distinction between speech and conduct, and there are, of course, also laws which relate to conspiracies to interfere with the exercise of civil rights, and we need to look at all that to allow people to exercise their legitimate speech rights, but not interfere with those who want to exercise their right of choice.

Senator KENNEDY. My time has expired; but finally, increasing examples of discrimination against women who are pregnant or new mothers are rampant in the workplace. Women on maternity leave frequently return to work and find that they have either been demoted or their jobs have been eliminated. Are you aware of this trend, and are you committed to trying to do something about in terms of the enforcement of the Civil Rights Act?

Ms. BAIRD. We do need to work hard at that. I think I have a distinctive understanding, as a woman who has been in a number of corporate environments, as to how these things can happen, and I think that we need to work together to find ways to eliminate discrimination where it exists and to create a better environment for women in the workplace through other means, such as education and aspirations that we would set for employers.

Senator KENNEDY. Mr. Chairman, my time has expired.

The CHAIRMAN. Thank you very much, Senator.

Again, a housekeeping matter. I said we'd try to break at noon for an hour for lunch, and that being the case, we will get two more rounds in, but I am going to try—Senator Simpson, the minority whip, has a lot of responsibilities as well—we may go a little bit over so we can get Senator Thurmond, Senator Metzenbaum, and then Senator Simpson in, assuming that everyone keeps within their 15 minutes. So we may go slightly beyond 12 before we break.

With that, let me recognize Senator Thurmond.

Senator.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, first, I want to welcome the new members of the committee. On our side, we have Senator Cohen, who is a valuable member of the Armed Services Committee, and we welcome him here. We have Senator Pressler, an able man, who is not here at the moment, but we welcome him. Additionally, we have Senator Feinstein, and we are glad to have her as well as Senator Moseley-Braun. I am glad to see some ladies on the committee, I believe for the first time.

I have two boys and two girls, and I want my two girls to have the same opportunities as the boys. Again, I am glad to see you two ladies join this committee.

Now, I want to say to Ms. Baird that I congratulate you on having the endorsement of both of your Senators. They are both able men, Senator Dodd and Senator Lieberman, and their endorsement carries a great deal of weight. Both Senators from your home State are strong for you, and that means a lot to you.

Now, I want to say to Senator Biden, as I move from Judiciary to Armed Services as ranking member, of course, I am remaining on Judiciary, but Senator Biden, it has been a pleasure to work with you. We have worked together on many matters, and we haven't agreed on everything, especially some criminal matters, but I have found you an honorable and fine gentleman, and it has been a pleasure working with you.

The CHAIRMAN. Well, thank you. I'll miss working with you directly, Senator.

Senator THURMOND. And Senator Hatch, as you take over as ranking member, I know you are going to do a fine job. You are an able lawyer and a splendid man, and I wish you well in this work. I am sure you will enjoy being ranking member of this outstanding committee.

The CHAIRMAN. Senator, he'll do fine as long as he consults with you regularly.

Senator THURMOND. Now, I want to say to Ms. Baird that I want to vote, if I can, for all the Cabinet members of President-elect Clinton. I have had some serious concerns about your relationship

with the Peruvian couple. I was glad you explained the situation, and I think that helps. I still have some concerns, and I will think it over carefully, but I just want to say that as you enforce the laws as Attorney General, it may flare back in your mind when somebody does the same thing you did; what would you do? In other words, that may come back to you.

Now, as I understand, you admit you did wrong; is that correct?

Ms. BAIRD. Yes.

Senator THURMOND. You are sorry you did wrong?

Ms. BAIRD. Absolutely.

Senator THURMOND. You are repentant for doing wrong?

Ms. BAIRD. Yes, sir.

Senator THURMOND. You won't do it again?

Ms. BAIRD. You can be sure of that.

Senator THURMOND. And it won't affect your work as Attorney General?

Ms. BAIRD. I think not.

Senator THURMOND. Now, there is one question or two I want to ask you that has not been brought out. As I understand it, the State of Connecticut prohibits an illegal alien from possessing a driver's license. Did the Peruvian man who drove for you and your family have a driver's license?

Ms. BAIRD. Sir, he did, but my understanding is that Connecticut law does not inquire into the status of someone who applies for a license. This was not something that I looked into. He came to our employ with a driver's license. But that is my understanding of Connecticut law.

Senator THURMOND. Ms. Baird, there are a lot of questions we could ask you, and time is limited, so I'll ask you a few, and when my time is up, Mr. Chairman, please inform me.

The CHAIRMAN. Surely.

Senator THURMOND. As Attorney General, you will serve as the Nation's chief law enforcement officer, with oversight for the FBI, DEA, INS, U.S. Marshals Service, Bureau of Prisons, and the U.S. attorneys. With limited Federal resources, there is a greater need for improved cooperation among all the Nation's law enforcement agencies in our fight against crime. How do you intend to coordinate and unify the Department of Justice's law enforcement efforts and ensure greater coordination with other law enforcement agencies which do not fall under the umbrella of the Justice Department?

Ms. BAIRD. I think this is clearly one of my greatest challenges if I become Attorney General. I don't say this to criticize past management, but as I look at the Department over the last 10-plus years, its employee population has grown from 40,000 to 91,000 or something in that range, and as I have begun to examine this, it seems to me that that has been done by layering people on top of existing people, not in a hierarchical sense, but by adding people rather than restructuring the programs, realigning the programs. And one of the things that I would hope to do in order to make most efficient use of the taxpayers' dollars devoted to the Justice Department budget and to the budgets of the agencies with which the Justice Department relates is to see whether we can't get greater efficiency for our dollars by realigning people and, as we

take on new responsibilities, try to do it without adding, or by adding to one area but creating greater efficiencies in others.

There is a real dynamic that can be created by interaction that truly makes the whole better than the sum of its parts, and I think we need a strong management eye to look at these functions in the Justice Department and in these other agencies in order to attempt to achieve that.

Senator THURMOND. Ms. Baird, as you may know, in the last Congress, the Senate and the House of Representatives passed separate crime bills, and they went to conference and produced a report which was unacceptable to the President and many in the Congress and the law enforcement community. After negotiations, it was clear that the linchpin to pass a compromise crime bill was the issue of habeas corpus reform.

Generally speaking, do you support the so-called one-bite-at-the-apple rule that capital cases should be subject to one complete and fair round of review in the State and Federal systems?

Ms. BAIRD. Senator, the habeas issue is a critical one. As it has been addressed in the bill, the question is what kind of habeas remedies should be available for those sentenced to death to appeal those convictions or the sentencing related to the convictions.

Senator THURMOND. Are you familiar with the Power Report?

Ms. BAIRD. Yes, I am.

Senator THURMOND. How do you stand on that? Do you think that is reasonable?

Ms. BAIRD. Well, I'd like to examine this more, and I'd like to examine it in consultation with you and the members of this committee, because we do need to achieve something very, very important here, which is to create finality—

Senator THURMOND. We've got to do something.

Ms. BAIRD. Absolutely, and in creating that finality, we also need to assure a process that is fair to the defendants in this process. And that may be habeas reform, certainly, but it also may be trying to improve the quality of counsel provided so that we have fewer issues that give rise to appeal.

I would like to work with the committee on this so that we can very quickly pass an omnibus crime bill. I think we should talk about the habeas provisions in doing that.

Senator THURMOND. For example, a man came from another State and killed a man in my State. He first robbed the man, and he killed three other people in the process. This criminal ruined a lady by shooting her in the face; she is ruined for life. He was tried and convicted. The case was tried, and it went through the courts. Yet, it took 10 years before he finally went to the electric chair. It ought to be done in 1 or 2 years. People are losing respect for the criminal procedure, and we've got to take steps to remedy this habeas corpus. That is one of the things we must do, and I am very anxious to hear your position on this issue.

Ms. BAIRD. I think, Senator, you have my commitment, as President-elect Clinton has made very clear, that it is very important that we look to habeas reform as a way of creating finality, that the extended appeals are very problematic, and we need to look at how best to do that while assuring fairness.

Senator THURMOND. Additionally, one provision in this so-called crime bill was to go back and reopen all of these death penalty cases again. I would be bitterly opposed to that. The Supreme Court would be opposed to it. So that is something I want you to think about very carefully. We can't afford to do that. They have already been tried, and they have been finished.

Ms. BAIRD, do you support capital punishment?

Ms. BAIRD. Yes, in appropriate circumstances, yes. And I think that you are probably well aware that Governor Clinton supports this, also.

Senator THURMOND. Ms. Baird, in *United States v. Leon*, the Supreme Court established a good-faith exception to the exclusionary rule. There was an effort in the Congress to codify this ruling and also to extend this exception to warrantless searches. How do you stand on this?

Ms. BAIRD. The exclusionary rule is one which I know has created a great deal of concern. But as we look at the issue, it really does seem to be working pretty well. I think we need to talk about this and to examine it, but there are very few cases that are thrown out by the exclusionary rule.

On the other hand, we want to make sure that there continue to be incentives for careful police practices. I have talked with the law enforcement community about this as I have met with them, and I think that we can have a very constructive dialog on this with them, and I would look forward to having it with the members of this committee and Congress.

Senator THURMOND. Well, we want more than a dialog on habeas corpus and the death penalty and the exclusionary rule. I want to point that out to you.

Now, Ms. Baird, there are over 100 vacancies within the Federal judicial system at this time. President Bush nominated a large number to fill numerous vacancies, but over 50 judicial nominees languished in the committee and were not acted on last year. Given the number of existing vacancies, what procedures will you initiate for the selection of candidates to the Federal judiciary?

Ms. BAIRD. We have begun to create the procedures that we are going to be using. Governor Clinton is committed to very quickly moving forward on the Federal judicial openings. There are tremendous burdens put on the courts in many jurisdictions by the fact that the openings exist, and we will work at that and try to get before this committee as quickly as we possibly can very highly qualified and diverse individuals to serve in these Federal judicial positions.

Senator THURMOND. Do you intend to maintain control of the selection process, or will the process be administered within the White House?

Ms. BAIRD. The process would be administered within the Justice Department, obviously with input, cooperation and participation of the White House.

Senator THURMOND. What characteristics or criteria would you look for in screening or recommending candidates to be a Federal judge?

Ms. BAIRD. President-elect Clinton has set forward two principal criteria, both of which I support. The first is quality. We will be

looking for individuals who have quality of mind and character that they should be in the positions of judging disputes between individuals in this society.

The second commitment he has made, to which I am very committed, is that we will look for diversity, and that means to the extent we can further the achievement of this, a bench that looks like America. And that means women, and it means minorities, and it means white males, and we will be looking very hard to achieve that diversity as well.

Senator THURMOND. I hope you will keep in mind not only integrity and professional qualifications, but judicial temperament.

Ms. BAIRD. Absolutely.

Senator THURMOND. I have seen some Federal judges embarrass jurors and lawyers and others in the courtroom, and there is no excuse for it. After all, they are human beings, and they can be courteous and respectful to all concerned.

Ms. BAIRD. That's absolutely critical, and I appreciate your adding that.

Senator THURMOND. What role do you believe the American Bar Association should play in the selection or recommendation of Federal judges, and what role do you believe other State, local, or specialized bar associations should play in the selection or recommendation of Federal judges?

Ms. BAIRD. I think that the approach that has been taken to date is the appropriate one and should continue. I think that means a professional evaluation, not a political evaluation.

Senator THURMOND. Ms. Baird, I have not normally asked this next question of any nominee, but the committee has asked the previous Attorney General, and I feel it important to get your answer on the record. What is your view about the constitutional right of privacy, and does that right of privacy extend to abortion? Specifically, do you have a position as to whether or not *Roe v. Wade* was rightly or wrongly decided?

Ms. BAIRD. Senator, I do believe in the right of privacy and would consider myself pro-choice, although I will say as a woman that I am very grateful I have never had to face the choice.

Senator THURMOND. What do you think is meant by the advice-and-consent clause of the Constitution regarding the President's power in appointing judges?

Ms. BAIRD. I think that that requires of us a good-faith effort to consult as well as to place before you nominees that you can look at as reflecting the quality, diversity and, as you say, judicial temperament that will make you pleased to confirm them.

Senator THURMOND. I noted in an article about your nomination that you played a role in opposing Judge Bork's nomination to the Supreme Court. You were described as having enlisted an influential lawyer to oppose Judge Bork's nomination. Also, this article mentioned that your husband, a constitutional scholar at Yale Law School, helped to formulate strong testimony against Judge Bork's confirmation.

What role or efforts did you undertake in Judge Bork's confirmation battle?

Ms. BAIRD. I was consulted by individuals who were hoping to have William Coleman testify about whether he might and how he

might be approached, and I, of course, couldn't comment on whether or not he might, but I simply told them, I think, to call him up.

Senator THURMOND. Ms. Baird, you served in the Office of Legal Counsel during a time in which a debate began regarding whether or not the U.S. Government has the power to seize fugitives on foreign soil. While you served in that office, I believe an OLC opinion deemed this snatch authority as a violation of international law. Recently, the Supreme Court held that the Government has the legal authority to seize fugitives abroad.

What is your opinion now regarding snatch authority, and as Attorney General, would you pursue policies to apprehend criminals who have fled the United States?

Ms. BAIRD. Senator, I wasn't involved in the legal opinion at the time, and I must say that it is a subject I would have to study.

Senator THURMOND. I believe my time is up, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you. In just a moment, we are going to break for 5 minutes to give you a chance to stretch your legs, and then we'll come back for Senator Metzenbaum and Senator Simpson, and then we'll break for lunch.

But one thing for the record. Back a week or so ago, I wrote to you through your counsel, and I asked you—and I don't have a copy of the letter in my hand now—but I asked you did you or your husband ever attest to the immigration status of the couple who worked for you, other than on the forms filed with the Department of Labor or the INS; for example, on a driver's license application, health insurance application, et cetera. The answer that I received, and that I would like to submit for the record, from your counsel was that—hold on just a moment; I beg your pardon—it says: "To the best of their knowledge"—and this is signed by Jamie Gorelick, counsel for you—"To the best of their knowledge, neither Ms. Baird nor Professor Gewirtz ever attested to the immigration status of"—the couple in question—"other than on the INS and DOL forms already provided to the committee."

Is that correct?

Ms. BAIRD. Yes.

The CHAIRMAN. So you did not—and the reason I bring it up is because a question was raised about the driver's license—neither for the driver's license nor for any other form did you or your husband attest to the status of the couple that worked for you.

Ms. BAIRD. That's right; we did not.

The CHAIRMAN. I will also put in the record a copy of a letter submitted to us by your counsel to another individual, indicating what the policy of the Connecticut Department of Motor Vehicles was relative to driver's license. The question here—from Mr. Timothy G. Phelan, legislative liaison, State of Connecticut Department of Motor Vehicles, a letter dated July 26, 1990, relating to another person, not the folks that worked for you—the question asked of the Department of Motor Vehicles was: "Is an individual's immigration status in the United States a factor in the issuance of a license?" And the answer is: "No, such status is not a factor in the issuance of a license in the State of Connecticut."

So I will put that in for the record.

[The documents follow:]

COMMITTEE ON THE JUDICIARY
WASHINGTON DC 20510-6275

January 15, 1993

Ms. Zoë Baird
c/o Seth Waxman

Enclosed please find a request for information and documents with respect to the Judiciary Committee's consideration of your nomination to be Attorney General of the United States. I respectfully request that you answer these questions as expeditiously as possible. If you have any questions, please contact Cynthia Hogan at (202) 224-0747.

Joseph R. Biden, Jr.
Chairman

Document and Information Request

1. Please provide for you and your husband a copy of IRS tax form 1040, whether filed separately or jointly, for years 1990 and 1991, which contains all information relevant to exemptions for dependents and child care expenses, including answers to questions 6 and 41. Other information not related to these issues may be redacted. Also provide form 2441, if filed as an attachment to form 1040 for these years.

- Did either Victor or Lillian Cordero have a driver's or chauffeur's license? Does the State of Connecticut require a chauffeur's license for the type of driving Victor performed for you?

3. As the employer, did you ever attest in writing or otherwise to the immigration status of the Corderos other than on the DOL/INS information you have already provided to the Committee, for example, in connection with financial accounts, loans, credit cards, insurance applications, etc. If so, provide details.

LAW OFFICES

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January 17, 1992

By Telecopier

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JAMES R. HEAVNER, JR.
*NOT ADMITTED IN D.C.

Cynthia C. Hogan
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Ms. Hogan:

This letter provides the information requested by Senator Biden's letter of January 15th.

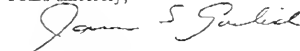
1. The relevant portions of the tax returns were telecopied to Guy Molock yesterday. Ms. Baird and Professor Gewirtz did not claim any child care expenses, and accordingly they did not file Form 2441.

2. Enclosed is an executed prospective employment contract which was filed as an attachment to the Department of Labor Application. To our knowledge, both Victor and Lillian Cordero had valid driver's licenses.¹ As best we can determine, no special license was required for Victor Cordero to drive Ms. Baird to and from work in her own car.

3. To the best of their knowledge, neither Ms. Baird nor Professor Gewirtz ever attested to the immigration status of the Corderos, other than on the INS and DOL forms already provided to the Committee.

Please let me know if the Committee requires any additional information.

Yours sincerely,


Jamie S. Gorelick

¹ During the period in which the Corderos were employed by Ms. Baird and Professor Gewirtz, the Connecticut Department of Motor Vehicles did not require proof of immigration status as a condition of issuance of a driving license. See Attachment.

EMPLOYER-EMPLOYEE AGREEMENT BETWEEN

PAUL D. GEWIRTZ AS EMPLOYER

and LILLIAN C. CORDERO AS EMPLOYEE

The terms and conditions covering the employment of LILLIAN C. CORDERO in the household of PAUL D. GEWIRTZ:

The duties of the job would be as follows:

Provide care, attention and protection for one child age one and a half years in our home, including preparing meals, feeding, dressing and bathing child, maintaining his clothing and room and attending to his physical and emotional needs in our absence. Light housekeeping duties as needed.

The standard work schedule for the performance of the above duties will cover 5 days per week, totalling 40 hours for a basic work week.

Actual hours for the standard work week will be as follows:

5 days per week from 7:00 A.M. to 7:00 P.M. Employee will have one hour for lunch and two hours rest period.

The salary for the first 40 hours will be \$5.96 per hour, and the weekly wage is \$238.40. Overtime will be compensated at same hourly rate.

It is understood by the parties to this agreement that it will be necessary for the employee to live at the premises of the employer, so as to be available for the performance of the above-mentioned duties. A private room and board shall be provided the employee at no expense.

The employee shall have the right to leave the premises of the employer during the non-working hours and shall be compensated for all work performed during non-working hours at rate set forth above.

The employer and the employee herein do hereby declare that no sums of money were advanced by the employer to the employee, and therefore no sums of money will be deducted from the salary of the employee in connection with the repayment of sums advanced.

In no event shall the employee be required to give more than two (2) weeks notice of intent to leave the employment contracted for, and the employer must give the employee at least two (2) weeks notice before terminating the employment.

The employer has furnished a copy of this agreement to the employee and the employee hereby acknowledges receipt of the copy of this agreement; and both parties agree to the above-mentioned terms as outlined.

Lillian Cordero
EMPLOYEE

Paul D. Gewirtz
EMPLOYER

Dated: July 30, 1991



STATE OF CONNECTICUT

DEPARTMENT OF MOTOR VEHICLES

60 STATE STREET • WETHERSFIELD, CONNECTICUT 06109

July 26, 1990

LAWRENCE F. DELPONTE
COMMISSIONER

Mr. Crescenzo DeLuca
Wolcott Business Center
81 Wolcott Hill Road
Wethersfield, CT 06109-1242

Dear Mr. DeLuca:

Enclosed is a response to your letter dated July 10, 1990 concerning the Department of Motor Vehicle's policy regarding non-U.S. citizens.

You asked three specific questions which I will respond to in order.

- 1) What documentation is required of non-U.S. citizens for issuance of a driving license?

Any applicant for a Connecticut driver's license must (a) supply address verification, i.e. utility bill, phone bill, or some other mailing, personally addressed to the applicant at his or her Connecticut address; (b) present proof of name and identity: a current out of state license, birth certificate plus one additional item such as social security card, passport, alien registration document, etc.

- 2) Is an individual's immigration status in the United States, a factor in the issuance of a license?

No, such status is not a factor in the issuance of a license.

- 3) Does your office inquire into the immigration status of an individual upon application for a license, and if so, what is the purpose of this inquiry?

Prior to the letter sent to Mr. Larkin, a copy of which you have, the Department of Motor Vehicle's policy was to check the status. That policy was flawed as recognized by our Attorney Mr. Yacavone, and has stopped.

I hope this information is helpful. After reading it, if you would like to meet with Commissioner DelPonte and Attorney Yacavone, one will be arranged.

Sincerely,
Timothy G. Phelan

Timothy G. Phelan
Legislative Liaison

Enclosure

The CHAIRMAN. With that, we'll recess for 5 minutes to give you a chance to stretch your legs, and then we'll have two more rounds, and then we'll adjourn for lunch.

We'll recess for 5 minutes.

[Recess.]

The CHAIRMAN. The hearing will come to order.

As all schedules, particularly those in the U.S. Senate, they are subject to change, what we are going to do now is we will proceed with Senator Metzenbaum's round of questioning, at which time, when that ends, we will break for lunch until 1:30. Then we will begin with the distinguished Senator from Wyoming and we will move as far along and as expeditiously as we can.

Senator Metzenbaum.

Senator METZENBAUM. Ms. Baird, I am happy to see you again and pleased that you are here before us. I must say that I have a sense of excitement about the fact that you are to become the first woman Attorney General of the United States.

The Chair suggests that I start over, because I could not be heard previously. What I was saying is that when I heard of your nomination, there was a sense of excitement that I had that you were to become the first woman Attorney General in the United States.

It is only fair to say that some of the developments and some of the issues to which the Chair has addressed himself have caused much concern. They have caused concern out there with middle-class Americans, with people without very substantial assets.

I think that you have acquitted yourself very well, speaking very directly to that issue and not equivocating, in saying this is what it was, it was wrong, and at least for this Senator I think that I can accommodate that fact.

I am frank to say that I called my office this morning to ask how the calls are running, and it was with some chagrin and disappointment that they said 50 no, and none yes. On the other hand, while I was moving around the community last evening, I saw some of the people from some of the women's groups, and they were saying "wonderful, Zoë Baird is going to become the Attorney General."

So I think that you carry a burden, not alone upon your own shoulders, but for all the women of this country, and my guess is that you will acquit yourself well. It is not unrealistic to say that your previous associations at Aetna, and GE raise issues, but I believe that you can be legal counsel for somebody, take a job in the public interest and totally separate yourself from the views or the arguments that you may have made in yesteryear.

With respect to your response to my good friend and colleague, Senator Thurmond, in connection with the matter of habeas, I thought that your answers indicated sensitivity to that issue. There is not a unanimity of view on that subject. I think your response with respect to the matter of the quality of counsel that the convicted individual has had is a very relevant aspect of that whole problem. And I think you are well aware of the fact that there is not unanimity in this committee, nor in the Senate, nor across the country, on the issue of the death penalty.

Having said that, let me move to some more specific questions. Some concerns have been raised concerning your nomination because of your work as in-house counsel for GE and Aetna and the suggestion that it might present a potential conflict of interest. By all accounts, you were an effective advocate for those companies, and my guess is that you did a superb job or you wouldn't have held the position.

As Attorney General, there will be instances in which you will have to decide whether the department should take a position on a legal or policy issue which is at odds with positions taken by GE or Aetna, or even taken by you in a previous life activity.

In order to alleviate concerns about any potential conflict of interest, you have stated that you will recuse yourself from "particular matters that have a direct and predictable effect on Aetna or GE." Now, that is a very sensible approach, but it is a little difficult to understand how that will work in practice.

GE and Aetna are large diverse companies whose bottom line financial picture can be affected by a host of public policy issues. These are not just single activity companies. Aetna would feel the impact of proposals affecting the insurance industry's treatment under the antitrust laws, tort reform, and health care. GE would be affected by issues concerning contractor fraud, defense industry mergers and a wide range of entertainment industry issues, because of its ownership of NBC.

You also sat on the board of a telephone company in New England, and there are a variety of issues affecting the telephone industry with which the Department must grapple. Could you give this committee and the public an idea how your recuse policy will work in practice? Will it affect only specific court matters in which these companies are involved, or will it extend to instances in which the Department has to take a public position on a legal, legislative or policy issue which affects these companies?

Ms. BAIRD. Senator, the first thing I have to say about that is that I have committed to divest myself of any interest in those companies or any other company in which I hold any financial interest, upon taking office. And it may surprise you, it surprised me to learn that has not been the practice of every prior Attorney General. It seems to me it is absolutely critical that my only interest be an interest in the people of the United States, and I will, therefore, divest myself of any financial interest, whether it means giving up pension benefits or anything of that sort.

The second thing I would say about that is that I believe that, as Attorney General, there is a particular distinctive responsibility to assure the public that I am not acting in any interest other than that of the people of the United States. I said that before when I talked about protecting the Department from political influence, because it is important that the Justice Department not act in the interest of any given political party or political individual, but it is also critical that the Department not act in the interest or be perceived to act inappropriately.

There obviously are political issues. I didn't mean to suggest that there weren't. But in the basic enforcement and day-to-day work of the Department in the areas where there shouldn't be political in-

fluence, I want to establish measures, as well as an atmosphere that doesn't allow that to happen.

Similarly, I want to assure that in my dealings it is very clear that I am not acting in a matter that directly and predictably affects any company in which I have had an interest. Now, there is a very good process in the Justice Department where I can take matters that I have worked on before or matters that might affect the companies or industries which these companies are in and have it evaluated by career professional ethics officers to determine whether I can participate in something.

What I have said to them is I want to reverse their usual presumption. Their usual presumption is you can participate unless they say no. I want an understanding that I will not participate unless they say yes, and that is the arrangement that I have worked out with them in my ethics opinion.

This is a critical moment to restore the public confidence in the Justice Department. I have valued that public trust since the first day I got out of law school and learned about the Justice Department, when I first saw it appear in court when I was clerking, and when I then went to work in the Justice Department in Washington, and I think it is very, very important to do that.

I will say in response to your question, does this mean you are out of everything or something implicit in the question, when you talk about the reach of these companies, that my understanding is that I am likely to be asked not to participate in a matter where GE or Aetna are parties for my entire tenure, unless the relationship is approved by this ethics office.

The board I was on, the telephone company board I was on, I gather that the ethics office views in a somewhat different status and that recusal was likely to be for a year, but I am still going to ask them to look at it.

The general policy issues that affect industries generally, but among those industries are those in which GE and Aetna are involved tend not to be matters where the ethics office would ask me to recuse myself. In the middle are things that I have worked on specifically or where an industry in which GE or Aetna is a member, is solely affected, and that is where the ethics office will have to look hardest.

My understanding, in talking with them through my lawyer, is that they don't anticipate any inhibiting range of recusals, that my interests are not distinctively different than others who have assumed the office who have had clients in private practice where this issue has occurred. As you know, we have talked about the 91,000 employees in the Justice Department, the hundreds and hundreds of cases and policy matters, and I don't anticipate that these recusal issues will be distinctively difficult.

Senator METZENBAUM. I think your answer covers my question pretty much. I think in the last analysis, Ms. Baird, when you see a problem coming, it won't be a question as to whether the ethics office says you should or shouldn't be involved. I think the real determinant will be your own conscience, if your conscience says this just isn't right or doesn't look right, or I wouldn't like to be questioned about this or whatever the case may be, in the last analysis.

I believe that most of us in public office have to live with ourselves and that is the question that is the major determinant as to whether or not we in our gut think it is right, and I think you are the kind of person that will do that. I would just hope so.

Ms. BAIRD. Thank you. Yes.

Senator METZENBAUM. Now, whistleblowers have played a crucial role in ferreting out fraud against the Government and misuse of taxpayer dollars. However, whistleblowers often suffer great hardship and are frequently subjected to retaliation by their employers. That is why Congress has passed a number of laws designed to protect whistleblowers and promote disclosure of fraud and abuse.

One such law is the False Claims Act. The act enables employees of Government contractors who uncover fraud or abuse against the U.S. Government to bring so-called qui tam actions. These are lawsuits filed by private citizens in the name of the U.S. Government.

In 1986, Congress amended the False Claims Act to enable whistleblowers who file successful qui tam suits to collect a portion of the money recovered by the Government. Last year alone, qui tam suits filed under the False Claims Act helped the Government recover approximately \$250 million in contractor fraud cases, but there has been resistance to the statute. And your former employer GE was one of the main resisters, and they challenged the constitutionality of the act. There have been a number of other constitutional attacks on the act, but none has been successful.

It is my understanding that you played a significant role in preparing GE's constitutional challenge. Moreover, press reports indicated that you represented GE in its efforts to place some limits on our qui tam suits. The Bush Justice Department also has exhibited some misgivings about the False Claims Act. It declined to defend the constitutionality of the act in court.

Current officials of the Department have criticized the act as too burdensome and occasionally have questioned the integrity of whistleblowers who bring legitimate claims under the act.

One Federal judge has written that—and this is very significant—"The pattern of behavior in these cases by the Department of Justice has always been a mystery. It is worthy of note that the Justice Department has considered whistleblowers as adversaries, rather than allies." The court continued on, "This is not the first case where this court has noted the antagonism of the Justice Department to a whistleblower."

The False Claims Act has proved to be a very valuable tool in uncovering fraud against the government, whether it be in the defense industry or in the health care field. But given GE's objections to the act and the Justice Department's apparent misgivings about the statute, I am concerned about whether this law would be fully utilized and strongly protected by you, as Attorney General.

If you are confirmed, will you work to insure strong implementation and enforcement of the False Claims Act?

Ms. BAIRD. Senator, I can give you my commitment that I will work with you and Senator Grassley—and others on this committee and in Congress—who believe that this act has as strong role to play. I think that there is a legitimate purpose for encouragement of whistleblowers. I have said in private conversations with both

you and Senator Grassley that I believe in whistleblowers and, in fact, that GE tried to encourage whistleblowing.

There it was whistleblowing to the company. But I was actively involved in developing a program to get people lower down in the company jump their bosses and feel there was someone they could go to and blow the whistle on problems that were occurring in the company. And I think it is very, very important that we work together, and I may even have ideas of how to do this better, having seen how business is conducted in some companies, and the health care area is one that I appreciate there is interest in looking at now, too.

We are talking about money spent from the public fisc, and it is very, very important that the Justice Department play a role in working with this committee in trying whatever creative means can be found, legitimate creative means can be found, to ensure that that money is wisely spent and that fraud is discovered.

The legislative act you referred to was really a piece of my attempting to encourage whistleblowing within companies. It wasn't contradictory to, in my mind, then at GE, and I can't tell you what I would think about that in looking at it from the point of view of being the Government lawyer.

Even then at GE, I was attempting to work with Congressman Berman, who would have been, Senator Grassley, the House co-sponsor of this legislation, to encourage this voluntary disclosure by companies to the Government of problems found themselves, by saying that if the Government is investigating something, that there wouldn't be the possibility of a qui tam action on something that the company had already disclosed. It really was of a piece of this effort to get fraud surfaced within a company, not hidden, and to get it surfaced to the Government and the recompense paid.

So I would hope to work very closely with you on this, and I may even have some ideas.

Senator METZENBAUM. I will just finish up, because I know my time has expired. You will have no difficulty in having the Justice Department aggressively defend the constitutionality of the act in court?

Ms. BAIRD. Senator Metzenbaum, unfortunately, the constitutional issue, because I worked on that particular issue in a case that is in litigation, is one where I would not be able to participate at the Justice Department, and, given that, I really can't comment here because of the influence it might have were I confirmed.

Senator METZENBAUM. That would then be assigned to somebody else in the Department of Justice?

Ms. BAIRD. Presumably the Deputy Attorney General would be the person making the final decision about the Department's position on that issue.

The CHAIRMAN. Do we know who that is yet, who might give us a scoop? [Laughter.]

Ms. BAIRD. But I will consult.

Senator METZENBAUM. I think my time is expired. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

We will now recess until 1:30.

[Whereupon, at 12:21 p.m., the committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. Welcome back, Ms. Baird. I hope you had a chance to get a bite to eat, at least something. These are grueling. Everyone else finds them difficult, but no one has to sit in the seat you are in, where it really is grueling.

Let me again do a brief housekeeping matter. Senator Simpson will begin our questioning, and Senator DeConcini would be next, but he may have to leave to go introduce a colleague, a former governor and friend of his, former Governor Babbitt to the committee where he is undergoing his confirmation hearing. So what we will do, Senator DeConcini, is when you come back, you will be next in line of the Democrats who would be prepared to ask questions.

Senator DECONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. It is my inclination to close the hearing today by about 4 o'clock. I will caucus with my Republican and Democratic colleagues as to when we reconvene. It is obvious we are not even going to get through a first round of questioning today by all the members, and we also have several panels of witnesses who are going to testify. So we obviously are not going to reconvene tomorrow, unless we can convince the President to put off the inauguration for a day, and I doubt that is likely. So we will either reconvene on Thursday or we will reconvene at the beginning of next week. But we will make that judgment, see how much time we get by today and after consulting with my colleagues.

Having said that, the floor is now the Senator from Wyoming's, Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman. I appreciate that.

Ms. Baird, I also have appreciated the opportunity to visit with you, as we talked by phone about these serious facts in this hearing.

I do want to take a moment to welcome Carol Moseley-Braun and Dianne Feinstein to the committee, and our colleagues, Bill Cohen and Larry Pressler.

I think that new members will find that this Chairman Joe Biden is very fair, very direct, very accessible, and very reasonable. His word is his bond, I have learned that. There are many things about this committee that may be controversial, but one is not the leadership, in my mind. Many of us are lawyers. We have inducted Senator Grassley as an honorary lawyer, at my left here, a good man, does great work with the committee. There are non-lawyers on the committee.

But this committee cannot function like a court of law, and that is why things we do may look a little soppy, but that is the way that works. Because if we were a court of law, we might have closed executive-type hearings on certain sensitive issues, we would have the rules of evidence, we would have cross-examination, we would have all the things that go with protection of witnesses, which we cannot attain here in this Judiciary Committee, simply because it is a very visible thing.

So as we do our work without the rules of evidence, without essential due process, without the ability of a person to have the

counsel present, those are things that you should be aware of and the American people should be made aware of as to what this committee does in its functioning.

Mr. Chairman, Orrin is not here, but I do hope under the new administration that we will be able to have more access more swiftly to FBI reports. I realize it was this last administration that somehow went into some adventure unknown to me, but we can't function properly with an FBI report, a single report distributed on a Friday at 10:30 that some person has to come to our office and minister to us, so won't do anything wrong, and that is just absurd and I hope you will join, and Senator Hatch will join in resolving that as soon as possible.

The CHAIRMAN. If the Senator will yield just for a moment on that, it has always been a matter of contention and controversy. I admit to my colleague that I have been overly scrupulous in seeing to it the manner in which anyone could gain access to the FBI report, because it is confidential, and I will entertain any suggestions from the committee. But the way it works now is that, since it has been mentioned, is the chief counsel of the committee and the investigative core staff literally walks in with the report into a Senator's office, stays there while the Senator reads it or gets briefed, and collects it and takes it back.

I must admit I may be overly sensitive to leaks. I look at some of the press and there have been none from this core staff and there will be none, but I am anxious to work out any accommodation my friends may suggest that would make it easier for them to do their job.

Senator SIMPSON. Thank you.

Senator METZENBAUM. May I just add a word to my friend, without it counting against his time.

I think at the same time we do that, we ought to see to it that the FBI report comes to us directly, not adulterated, not fixed up at the White House, whether it is a Democratic White House or a Republican White House, because the FBI has said we consider that we work for the President. I think they work for the people of this country, and I think we ought to do something jointly, Republicans and Democrats, to see to it that the FBI gives us straight information, not doctored information as filtered through the White House.

The CHAIRMAN. You can see there is nothing simple on this committee, Ms. Baird.

Senator SIMPSON. Well, there is one remarkable clarity, and that is Senator Metzenbaum and I do not vote often on the same side of issues, but we do have high regard for each other. I think it is very important and I hope that we will be spared, too, and I hope you will all join me, that we don't see the remarkable remarks that say "Witness No. T-4 stated as follows," and none of us know who Witness T-4 is, and I can tell you that is the most destructive thing I can imagine to anyone, and that could happen to any of us. I have seen enough of those, "Witness T-4 fiercely requested anonymity," and then you read it and you know why.

The CHAIRMAN. I assure my colleagues we will caucus on this to figure out if there is a better way to handle these reports. I want the record to show that the articles in question relating to the mat-

ter discussed heavily today before this committee relating to undocumented aliens that the press wrote about occurred before the committee received an FBI report. We had no FBI report in hand at the time.

Senator SIMPSON. Now that my time has just begun to run—no, that is all right, I see a few minutes——

The CHAIRMAN. No, we will not count that against your time, Senator.

Senator SIMPSON. Housekeeping matters, like we used to say in the Army.

Obviously, this is a serious issue. I think that the chairman directed some very lucid and strong questions to you, and your response was I think probably the most appropriate one that you could have given.

Americans are deeply concerned about this. I represent a small State of 460,000. That is smaller than many congressional districts. Some of the reaction has been coming in in large States and small States, much of it from women who I think feel that they, as single parents or working mothers, did not have this advantage and there is something stirring there that is very real.

You have described what happened with the Peruvian couple. You have said that you knew at the time you hired them that they were illegally in the United States. You have said that at that time, I think you said or indicated, that you had not asked for documents. Did you ask for documents to establish their legal ability to work in the United States at that time, you or your husband?

Ms. BAIRD. Senator, we knew they didn't have those documents. We have been told they didn't have the documents.

Senator SIMPSON. So they presented none of the documents that are listed in the immigration law as to be presented for work authority or knowledge of legality or illegality?

Ms. BAIRD. That's right.

Senator SIMPSON. The employment agency you hired obviously was involved in illegal activities at that time. They would not be illegal now, but we had a provision in the original law about recruiting and referral which we changed in the law in 1990. But obviously, at that time they must have been involved in illegal activity. You say that these two persons were recommended to you or given to you by an employment agency.

Ms. BAIRD. We learned of them through an employment agency. I am not familiar with what the law was governing the employment agency.

Senator SIMPSON. Well, that employment agency now, if they knowingly were referring, would be subject to penalty, but it was a tougher law back then when you did this act. They would be really out of business under the previous law, which we changed in 1990.

Nevertheless, obviously, we are all saying it, you have done something wrong. You have admitted that and used that word. You have knowingly employed illegal aliens, a violation of the immigration laws of the United States. As you know, I have a keen interest in illegal immigration. Senator Kennedy and I have worked on this issue for 14 years, and Senator Simon joined us as a member of the subcommittee, and there is another very volatile part of it that

will come up again on the issue of employer sanctions, that meaning penalties against employers who knowingly hire illegals. And some have said that is discriminatory and that will be a debate that we will go through in this committee in the coming months.

I do not think it is discriminatory. I think the worst possible discrimination is to have a situation where it is legal to hire an illegal, but illegal for the illegal to work. There is where the exploitation gets heavy. And there are many thoughtful Democrats and Republicans in the Senate who have embraced employer sanctions three times as being a very important part of illegal immigration reform, and I think we must keep that, and the Senate has backed that by a sizable vote, as has the House. So I have this keen interest.

It was as very important part of the Immigration Reform and Control Act in 1986, and along with Ron Mazzoli and Peter Rodino and others here, and Senator Metzenbaum who was of extraordinary help to me in passage of that, we support this concept.

But there is a word that appears in the reports, and I am not violating a confidential report, but the word is that you and your husband were trying to "regularize" these people. Where did that term come from?

Ms. BAIRD. I'm not really sure. It wasn't meant as a term of art. I have since learned that it is a term of art in the immigration laws, but it wasn't meant as one.

Senator SIMPSON. I just wondered if that was the attorney that gave you that term or how that came about.

Ms. BAIRD. I wouldn't want to suggest it was the attorney. I really don't know where we first used that word to describe what we were thinking of.

Senator SIMPSON. I noted in my review of what matters I was able to go into that you really did not sign anything or file papers or do anything that indicates your signature on these various labor certifications and other activities.

Ms. BAIRD. That's right. My husband handled all of this.

Senator SIMPSON. That is apparent, that he did all the work on this.

Ms. BAIRD. That's right.

Senator SIMPSON. Did he consult with the attorney?

Ms. BAIRD. Yes.

Senator SIMPSON. And that attorney is the attorney from the firm that produced the letter of January 5 as to his participation on your behalf, Belote?

Ms. BAIRD. Yes, that's right.

Senator SIMPSON. So you relied on his testimony or his advice?

Ms. BAIRD. Right. My husband spoke with the attorney and spoke with me about the situation.

Senator SIMPSON. I noted in your comments at the beginning of the confirmation hearings that not once did you mention the INS in your statement, although certainly you discussed the importance and priority areas which the Justice Department should address. I hope President Clinton will make a good appointment to the INS. It needs all the care and attention that the Justice Department and the Attorney General can give it. It needs resources. It is called the

Immigration and Naturalization Service. It is sometimes unable to enforce the law against small employers.

I think the greatest concern that all of us have is that others will see this as a flouting of the law. They will see it as privilege, elitism, lawyers do it, others do it, people in the high parts of society do it. It is the most serious issue of perception, and in this town fact means nothing. It is all perception, and we have all been through that. Not one of us on this panel hasn't been through that, and it is sometimes painful to see others go through that wringer, but that's the way the village operates.

So one of the things that is always terribly frustrating for me was, during the immigration law debate, to meet with people talking about human rights, exploitation of fellow humans, and then at the end of the hearing at some remarkable think tank or in the salons of Georgetown, ask the question, "Your bill doesn't apply to two or less employees, does it?" To which I would say, "Yes, it does," and there were attempts to make it apply to less than two, which we quickly dashed that in the debate.

Then people would say, well, yes, of course, well, that is certainly true, it should apply to all. But they really didn't mean that, and then I would say to them, "How about Sylvia out there in the kitchen?" She gets \$100 a week and every other Thursday off, and looks like she's not going to make it until Christmas. I would say, "What about that person?" "Well, we're talking about human rights."

It usually started a pretty good debate. So this law does apply to everybody and the people of America want it to apply to everybody, because that's what they see happening to them, "I've got to do that," and I suppose they think we in the Senate should also comply. Senator Grassley has been deeply involved in legislation to make the laws we pass apply to us, and there will be more of that and should be, painfully, but there should be.

I just want to be so certain that you will do something with the INS and make it a very vital part of the Justice Department, if you are confirmed. What is your view on that?

Ms. BAIRD. Senator, as I have talked with members of this committee over the last couple of weeks, there seems to be a very strong consensus that past administrations haven't given high enough priority to putting one of their best in as the head of the INS, and I think it's very important that we do that.

As I have listened to people on this committee talk about the situation, it is clear that there is a need for good management. Judge Bell, under whom I served when he was Attorney General, told me that the one thing—and I trust I am not speaking out of school by repeating this—that the one thing he regrets from his tenure as Attorney General was that he did not focus adequately on improving the management of the INS, and I think I have a great deal to contribute.

There the DEA, the other agencies within the Justice Department need strong leadership, and members of this committee have identified the INS as one which itself has not had the adequate focus and has not been given one of the best the administration is bringing to bear. I don't say that to be critical of individuals, because I am not personally familiar with individuals, but I say to you that a commitment of mine, as Attorney General, would be to

ensure that one of the best managers, as I understand it, and one of the best who can communicate with the members of this committee about what needs to be done with the INS is put into that position.

Senator SIMPSON. I think you will have a greater, an extraordinary, sensitivity to that after this. But we are a very generous country; 950,000-plus a year come to this country through our legal procedures. Yet, there is discussion in some circles that employer sanctions should be removed, and there isn't a question but that employer sanctions have contributed to the reduction in actual levels of illegal immigration. I think most agree that employer sanction is a more compelling and humane way to do this than militarizing the border, which are suggestions I used to receive in my duties as chairman of the Immigration and Refugee Subcommittee.

If confirmed, will you vigorously and fairly and completely enforce the employer sanction provisions of the Immigration Reform and Control Act with regard to employers, both large and small?

Ms. BAIRD. Senator, I would expect to insist that the department enforce all the laws, this one included.

Senator SIMPSON. Well, I think this is the crux of this case, fortunately or unfortunately, that people look at us, including this panel, and upon you as a designee, as ignoring the laws of the United States because of our status.

Ms. BAIRD. Senator, if I could comment, to elaborate a little bit on that.

Senator SIMPSON. Yes.

Ms. BAIRD. It obviously troubles me a great deal. I didn't do this to seek a special status for myself, and part of the difficulty—though I don't say this to excuse this—is the contradiction, if you will, that is communicated by a law that exists saying that there are civil penalties available for hiring someone like this, and then another process, a companion process, which seems to say something different.

As I say, I don't say that to excuse myself. I did appreciate the violation here and I don't say this to excuse myself, but I do say, as a matter of good government and thinking about how the Justice Department serves the people it serves and how it speaks to the people it serves, this is something I would have been attentive to, anyway, but it is something I am very attentive to now. The Government can create confusion without intending to or hear without commenting in more detail without understanding the policies behind how this developed at the INS.

I think it is important for me to keep in mind, if I am confirmed as Attorney General, that we need to speak with a clear voice. Again, as I say, I don't mean this to excuse, but I also appreciate that you are asking me to talk a bit about the policy issue here.

Senator SIMPSON. I do. I see that my time has expired.

The CHAIRMAN. Go ahead, finish the line of questions.

Senator SIMPSON. Thank you, Joe.

Again, it comes back to resources of the INS. They can't possibly operate with the resources we provide. Somewhere in some of the material I saw it called this a technical or some kind of violation.

The CHAIRMAN. Technical.

Senator SIMPSON. There was another term, too, technical or theoretical. That was a nice phrase, not from you, from an attorney somewhere in the background of my notes, a theoretical or technical violation.

Well, if that is true, then we should do something. If you can get it on the level of real life, it is like the guy in the little town; he knows there is a zoning ordinance against a fence over 6 feet high, but he also knows there is only one chief of police, so he goes out and builds the fence to keep this nutty neighbor and the nutty neighbor's dog out of his hair, and does that knowingly. That is something people understand and sometimes do, because they know that it is technical, and the other guy had a fence 5½ feet and the other guy 7 feet. Those are little things, but people understand that.

In my next round of questioning, I want to get into some of the things about fraudulent documents and summary exclusion, which are serious issues in the United States which your Department is going to be deeply involved in. People who come here destroy their documentation and ask for asylum, go into the community and we never see them again, or at least 40 or 50 percent of them. There are lots of serious issues, and are you ready, in the face of all this controversy, to direct your energies and attention to the INS and what it means in this country, if we are going to have a legal system of immigration?

Ms. BAIRD. Absolutely, absolutely. I don't think this in any way affects my ability to do that, my determination to look at this part of the Department and work with this committee on issues related to this part of the Department.

I don't in any way feel aggrieved by the INS. I certainly am not trying to suggest that there is anything—I have had a quite straightforward experience with the INS. The confusion was not their fault, and the problems were not their fault. I take that responsibility on myself.

Senator SIMPSON. Well, I think we need your earnest assurance on these things, very clearly, so——

Ms. BAIRD. Absolutely.

Senator SIMPSON. And you give that.

Ms. BAIRD. Yes.

Senator SIMPSON. Thank you, Mr. Chairman. I appreciate your courtesy.

The CHAIRMAN. Ms. Baird, one of the luxuries of being chairman is that you can, while changing the questioning, ask a question yourself, which others can't do. I want to be real clear on this. There was no confusion on your part, was there, as related to whether or not what you were doing was legal or illegal?

Ms. BAIRD. No.

The CHAIRMAN. The Senator from Alabama.

Senator HEFLIN. Following up a little bit on what Senator Simpson asked pertaining to the employer sanctions, when the immigration bill was up in—I don't remember exactly; maybe 1986—there was a lot of debate as to how you enforce the law pertaining to illegal immigrants and aliens being here, and this concept of employer sanctions was determined by the supporters of the bill to be the primary method of enforcement as opposed to employing a great

number of immigration agents who would be seeking out illegal aliens, and for having a series of reports and forms otherwise which would in effect bring about a much less expensive method of enforcement. This concept was opposed by a lot of people. I had a lot of questions as to how effective it would be. But primarily, it was to place upon employers a lot of responsibility pertaining to its enforcement.

Now, business groups objected to this. They said we'll have to do a lot of checking, and we'll have to have a lot of forms filled out on anyone who looks a little different. And that was one of their arguments pertaining to this.

You have a background as a corporate counsel, and as general counsel of a company. First, in your capacity as general counsel, do you have a counsel in your legal department who is charged with the issue of immigration and charged with the responsibility of notifying the employing divisions of your company as to what they should do pertaining to illegal aliens, or those who do not have green cards?

Ms. BAIRD. If a question like that came up at Aetna—which is principally a domestic company, but I appreciate that the issues might arise, anyway—that would be referred to an employment lawyer in my legal organization.

I don't believe we have anyone who is an expert in the immigration laws, so that person would undoubtedly turn to an outside immigration law expert because this is a very specialized field of law.

Senator HEFLIN. Well, the concept of it was—or, at least the argument that is being made by business—that it would cause them a great deal of expense in hiring these various people, to carry out the enforcement of it. Obviously, this concept in my judgment hasn't worked. Either businesses have not taken employer sanctions seriously, or there has been a sort of haphazard method of enforcement. And certainly, from the statistics and the figures that we have from the Department of Justice as to what has gone on with employer sanctions, there have been areas in which there has been no enforcement. So that is something that I think needs to be looked into.

Now, I gather from your testimony here today that basically, your husband is the one who dealt with the law firm and inquired as to what was legal, what was not legal, and where he got the advice that in the Connecticut area, the INS was not enforcing these sanctions.

Did you ever deal with the lawyer yourself, personally, or was this done entirely by your husband?

Ms. BAIRD. No; my husband received all the advice you've just mentioned. I never dealt with the lawyer.

Senator HEFLIN. You never did meet with him, talk with him, or do anything in that regard?

Ms. BAIRD. No.

Senator HEFLIN. So really, if there is a term of guilt here, it is sort of a guilt as an accessory and knowledge, and your husband is the culprit?

Ms. BAIRD. Well, Senator, it's not a crime, so I don't want to peg either of us with that. And I also don't want to distance myself from this. He did this because that's how we chose to divide the

responsibility given our time availability. And I did learn the advice of the lawyer through him, but I take responsibility for it.

Senator HEFLIN. All right. I notice that in the summary we have of the facts and by an investigation that in July 1990, your husband talked with this attorney, Tom Belote, by telephone, and that it was something like 7 or 8 months later before he ever met face-to-face with the lawyer and discussed it. Do you know whether or not this is correct? Was it more of a telephone interview in regards to it rather than a personal consultation?

Ms. BAIRD. I believe that his initial conversations with the lawyer were by telephone. He had some meetings with other lawyers, I believe. There was a Spanish-speaking lawyer that the couple wanted him to consider using, and he met with that lawyer, with them. It turned out that that lawyer's practice wasn't really in this area anymore, so he went back to Mr. Belote. And in that period of time, I believe he was getting the advice to collect the documents that would be needed before an application to the Labor Department could be made. I assume that he was being told—although I don't know this for sure, but I assume he was being told—that there wasn't a need to sit down and meet until he had those documents. And I explained this morning the time delay as I understand it was caused in significant part by the difficulty of obtaining documents from Peru, the time it took to obtain those documents, and also, as I recall now, there was an employer in this country who was dying, and the family didn't pay attention, as one would expect, to writing up this kind of documentation in that circumstance, and I think all of that was required before the Labor Department certification could be submitted.

Senator HEFLIN. Well, as I understand it, there are two steps. The first step is to request a certification from the Department of Labor that certain types of employees are not available.

The CHAIRMAN. Senator, if you will yield for just a moment—and I am not suggesting in any way, Ms. Baird, that you have intentionally misled us here—but from our staff investigation, I believe your husband spoke to the Spanish-speaking lawyer in 1991 for the first time; and if that is not correct, we should correct the record. That's what I understand.

Ms. BAIRD. I don't know, but I'll get you the answer.

The CHAIRMAN. It would be useful, because it could help us correct our record, and again, this is not a big deal, but I just want to make sure we have it precisely correct in terms of the chronology.

I thank you for allowing me to interrupt, Senator.

Senator HEFLIN. As I understand it, there are two procedures that were followed. One is to request a certification from the Department of Labor that in a given area there is no available labor which either have green cards or are American citizens. And if they certify that, then the procedure is that you then seek for the Immigration and Naturalization Service to qualify the individuals to get legal status and a work permit, and then, that goes on sort of a waiting list. There are a number of individuals who fall on it, and it doesn't necessarily automatically occur, and there may be a waiting period.

Now, as I understand it, in this regard, after the couple was hired, it was about a year before the certification request to the Department of Labor was filed. And part of that, as I understand it, is due to documents and the explanation that you have given. But then, even after the certification was obtained, there was some delay, and that lawyer even had to write your husband a letter to get him to come in relative to executing and signing certain papers that would go to the Immigration and Naturalization Service.

Is that a correct statement, or do you want to tell us anything different relative to that?

Ms. BAIRD. I'm not sure whether there is anything different from that, I would say. The one point I guess I would make is that, as I have said before, if I were handling it, I would have done it more quickly myself. There is really not much I can say to excuse the fact that it wasn't done more quickly.

I did explain this morning with respect to the time lag between the Labor Department certification and the application for the INS that it was a time of particular upheaval in our household because of the separation and the time we spent both caring for our child so that our babysitter could pull herself back together, and the time we spent with her, just comforting her. That doesn't explain the period of months here; it might explain some of the initial period.

I very honestly was not monitoring this myself, so I wasn't even aware that this time period was occurring when it occurred. I didn't—

The CHAIRMAN. Will the Senator yield for a moment on that?

Senator HEFLIN. Yes.

The CHAIRMAN. Was there any expectation or concern on your part or your husband's part during this period that it might be a moot issue and that if she were so upset, she may leave as well, so you might not be required to file anything anyway, because she'd be gone?

Ms. BAIRD. No.

The CHAIRMAN. Was there that much upheaval in the home at the time, relative to this woman?

Ms. BAIRD. No.

The CHAIRMAN. Was there a concern that she might leave as well?

Ms. BAIRD. I never discussed with my husband delaying anything with respect to the INS certification because of what was happening with her. I can't tell you whether there was something in his mind; not that I know of. Basically, our focus with her really was very much on trying to help her pull herself together in a traumatic situation.

The CHAIRMAN. Well, it would seem to me it would be a human condition—I mean, it would be a subconscious thing, that if, in fact, this was going on, this upheaval, and the next step that had to be taken was a fairly laborious process, and your husband or you all might not have been sure they were going to stay anyway, it seems to me it would be a normal human reaction to at least subconsciously put it off, thinking that she may not be here anyway.

Ms. BAIRD. Senator, let me say two things in response to that. First, I can't even excuse it as a laborious process. I don't think it

was that difficult. Second, I do want to make sure there is no misunderstanding. I was having many, many long, all-night-long, conversations with her about what she should do—whether she should get back with him, whether she should separate from him, what she should do with her life—and those conversations that spring very much included conversations about whether she could live in our house, having lived there with him, and how difficult that was all going to be for her.

I had her interest at heart, but I also had a countervailing interest of wanting to preserve continuity for my son, who was just 2 then, which is a particularly sensitive time in one's life to lose someone important.

So I don't want to suggest to you that I had no conversations with her about whether she should leave. I had no focus at all on the immigration matter. I assumed that was in course and was not thinking about that at the time.

The CHAIRMAN. Thank you.

Thank you, Senator Heflin. It is not against your time. Your time is still clicking.

Senator HEFLIN. Now, you wait until the end, or get your things there. [Laughter.]

The CHAIRMAN. I got my things all right. Keep going, Senator.

Senator HEFLIN. All right. For several months, there was employed by your family a Janet Purvis, who was a U.S. citizen, to take care of your child. And during that time, you withheld Social Security and unemployment from her paycheck, and you asked her to complete an I-9 immigration form. So you had gone through the idea of withholding Social Security and unemployment and had filed one of these forms that the person was an American citizen. That was previous to the Peruvian couple.

Now, when you employed this couple, and it is my understanding that this Mr. Belote gave you information or advice, that since a Social Security number was not available that you did not have to pay Social Security or withhold income tax. Is that the advice, as you understand, that was received from this lawyer?

Ms. BAIRD. No. The advice from the lawyer, if I could modify what you said a bit, was that we were not able to pay Social Security and unemployment taxes at that time; that we would be able to pay it, with interest and penalties, when they got their Social Security cards.

Senator HEFLIN. Well, now, as I understand it, that was erroneous advice that he gave you, that you could have paid it, have you found out that you could have paid the Social Security and withholding?

Ms. BAIRD. When I became connected to the transition, one of the transition lawyers knew of an individual who knew of a way that these taxes could be paid, and we have paid all the taxes, including interest and penalties.

Senator HEFLIN. Well, you know, there are a lot of people from foreign countries who come into this country and work in various capacities, frequently in universities, and from their income that they make here, there is deducted Social Security, unemployment, and other deductions that are made relative to this. Some, as I understand it, don't have Social Security numbers.

Did this raise some sort of question in your mind, the fact that you couldn't pay the taxes without a Social Security number, as being correct advice?

Ms. BAIRD. Senator, we asked the lawyer—my husband asked the lawyer this several times. We asked—my husband asked the lawyer whether there was a way we could even set up an escrow account, or some way that we could fulfill our commitment to pay even if these people weren't part of the Social Security System, and were told that we couldn't.

We had been referred to this lawyer through the U.S. Attorney's Office as an expert on these kinds of matters. He was a former special assistant to the U.S. attorney in the Southern District of New York and a formal INS official, and so we thought that what he was saying was credible.

I obviously am sorry I didn't myself try to find some other way around that.

Senator HEFLIN. Well, now, on income taxes, at the end of the year you have to file a W-2 form, and you have to give a W-2 form to the employers in order that they might calculate how much Federal income tax they have to pay. Were any inquiries made relative to this, as to whether or not you should or should not be withholding and whether you ought to file with the Government with a copy to the employee or employees, showing how much money they had made in order that they could pay their income tax?

Ms. BAIRD. My understanding with workers like this in one's home is that it is discretionary whether or not to withhold; that their income tax obligation is their obligation.

I quite honestly can't tell you specifically about the year-end form that you are talking about. This has all been reviewed recently with the IRS, and I understand that they are satisfied. I don't know specifically the answer to that question, but I will get back to you with the answer.

Senator HEFLIN. Well, that causes some concern. What about the unemployment tax? Was there any discussion with the attorney pertaining to whether or not unemployment, or whether there was a certain exemption; in some States, I think there is an exemption. But I notice that you had paid unemployment, or had it deducted, for this Janet Purvis. Was there any discussion about unemployment taxes being withheld and how they would be held in a trust or paid?

Ms. BAIRD. My understanding is that the same conversation about the Social Security numbers related to the unemployment tax; that the number was needed to pay it.

Senator HEFLIN. In other words, this lawyer looked into Social Security, withholding on income tax, and unemployment.

Ms. BAIRD. The withholding on income tax, I believe, is not required for domestic employees. They are required to take care of their own taxes; it is not an employer obligation. But his advice pertained to the Social Security tax and the unemployment taxes; that's right.

Senator HEFLIN. Well, now, you mentioned this I-9 form on immigration, where you had filed that, and then I believe in your testimony you said you were uncertain as to whether you had to file it or whether you just had to keep it as a record.

Ms. BAIRD. I think I corrected Senator Biden to say that I believed an employer was required to keep it, not to file it.

Senator HEFLIN. Well, now, was there any discussion with this lawyer pertaining to the I-9 forms on this couple?

Ms. BAIRD. I can't comment specifically on a conversation my husband might or might not have had, but I would assume that my husband was not able to complete that form because of their status.

Senator HEFLIN. I see my time is up.

Senator METZENBAUM [presiding]. Thank you, Senator Heflin.

Senator GRASSLEY.

Senator GRASSLEY. Let me assure you that I am not going to spend all my time on the immigration issue, but I do want to follow up on a couple things. Most of this has already been asked.

First, you have not told us the circumstances that surrounded the departure of your babysitter. When and why did she terminate, or why did you terminate her?

Ms. BAIRD. I think I was beginning to explain some of that in my comment to Senator Biden. When her marriage split up, she obviously was quite upset, depressed, and unhappy about the whole situation, and we began having—as one would in a situation like that, with a separation in one's home—lots of long hours of conversation about what she should do and how she should make a new life for herself—

Senator GRASSLEY. I heard those. Did she make a decision to go, or did you make a decision that she should separate?

Ms. BAIRD. We together made a decision that it was the right time for her to leave. That was in October. This was a decision that was a culmination of many months of conversation. At that point my son was in school and was almost 3, and I felt more comfortable about his being able to accept the loss of someone he was close to. He was much more independent, and she was feeling ready to get on her own feet and not be as dependent on us, and so we made the decision in October that she would leave. This was not the kind of employment relationship where one would fire or one would quit; this was a much more human, interactive relationship. And she stayed until we found someone else, which again took some time, and of course, until she found something else, some other job.

Senator GRASSLEY. OK. I'd like to give you an opportunity to say to the public at large, and this is my saying as Senator Metzenbaum has said, there are a lot of phone calls to our offices that are uniformly negative about your being in this position based upon the immigration laws. To what extent you could tell people why they should comply with immigration laws or Social Security laws—they might be wondering why they should—and what can you say to those people who would argue that they don't have to comply unless they get caught?

Ms. BAIRD. Well, I would tell them not to do what I did. I recognize that the foundation of this country is public acceptance of the rule of law. It obviously will be critical in the Justice Department for me to communicate to people that that foundation is strong and that my error, mistake, the thing I did wrong here, doesn't in any way affect my view of that or my commitment to that, and I hope

that in that position I could help people understand why their lives are improved by a strong commitment to the rule of law.

Senator GRASSLEY. Also, in just a little bit different angle, but directly related to the immigration and naturalization laws and the Attorney General's responsibility for enforcing those laws, what sort of a signal can you send, which I'm sure you'll have to say that you are for the enforcement of these laws, and you are going to see that they are enforced, how can you send that signal?

Ms. BAIRD. I don't think there is any contradiction there, Senator. I recognize that I did something that was wrong and I would never counsel anyone else to do something that was wrong. And I hope that conveying to people my aspirations for this country, that I can have them appreciate that the law is their ally, that it protects them against crime, it makes for a civil society, it protects them against discrimination, and that is what I would hope to communicate.

Senator GRASSLEY. Following up on Senator Metzenbaum's question about recusal, would you have to recuse yourself from any issues dealing with immigration and naturalization laws?

Ms. BAIRD. Not from any issues dealing with immigration and naturalization. I would certainly want the Office of Government Ethics and the ethics office in the Department to consider what recusals there might be with respect to this matter.

Senator GRASSLEY. Specifically related to your violation of the immigration and naturalization laws?

Ms. BAIRD. Yes, I would assume there would be some recusal related to this matter probably having to do with something connected to the sanction for domestic workers.

Senator GRASSLEY. The independent counsel law has expired, but if Congress would reauthorize it, you will have the responsibility, assuming it is reauthorized the same way it has been, you will have its implementation problems, you will be called upon to conduct a preliminary investigation in accordance with the law. Have you given any thought as to how you will handle allegations of wrongdoing by a high Government official, in light of your own recent experiences?

Ms. BAIRD. Senator, first let me say—again not trying to belittle this matter—this isn't a criminal matter, and so it is in a somewhat different category than one tends to consider under the statute to which you refer. I don't say that to belittle it. I just say that to make that clear.

But as you may know, and as I said in my opening comments, I am a very strong advocate of the independent counsel statute. It is very much of a piece with my commitment that people believe that there is not political influence in investigations, and also of a piece of my belief that the Justice Department has to make strong statements about when it can and can't act, because of the potential appearance of political influence.

In 1982, I was one of a group of people who were helping this body achieve reenactment of what was then called the special prosecutor law, in which Senator Cohen, in fact, renamed the independent counsel statute, and I am very much committed to the reenactment again of that law. Governor Clinton has said he supports it.

I understand that there is some interest on this committee in discussing whether some amendments might be appropriate.

But I think the fundamental notion that the executive branch should not investigate its own high-level officeholders is very, very critical to the public confidence. There needs to be an independent person who comes in and takes a look at the allegations against senior member of the executive branch, because the public otherwise I think fairly just won't believe that there is an even-handed approach to the law.

Senator GRASSLEY. I want to pick up with false claims, where Senator Metzenbaum left off. I have expressed to you my disappointment with the way that the present Justice Department has handled qui tam, and particularly with the encouragement or discouragement of whistleblowing.

First, I would like to have you hopefully reassure me that whistleblowers will be treated fairly in your Justice Department, and that fraud, whether it be Defense Department or Medicare fraud or any new areas that the law might be used in, is going to be vigorously sought out and prosecuted.

Ms. BAIRD. You have that commitment from me. I think, as I said earlier, that the qui tam provision is a creative way of providing an additional tool to law enforcement, and we need to look for other creative ways, too. I did not understand until I became involved in this process that there was a feeling that the Justice Department was dealing in an unfair way with whistleblowers in these qui tam cases, because when I left GE, this whole area was still fairly new. Most of the qui tam cases hadn't really progressed very far.

But it disturbs me to hear that. I think that there has been a great tradition in this country, probably for 100 years of whistleblowers, and that it is something that we need to encourage and work with and focus in the right ways. As I told you, I was very much an advocate of whistleblowing within companies, and it is to my mind not in any way incompatible to encourage this activity in these lawsuits.

What I think we also need to look at is other means to get at what it is that is driving the fraud in companies, and I think that I have some real understanding of how to get at that and how to affect that behavior that I would hope to bring to the Department. Because while it is very, very important to catch crime after it has happened, it is just as important to keep it from happening in the first place. And the more we can together understand what it is that causes people to commit fraud, the better off we are going to be to protect, in this case the public treasury from fraud on that treasury.

Senator GRASSLEY. In the present Justice Department there is an attitude that qui tam relators are parasites, and that is a word that I have heard from Justice. From that standpoint, I want to know if you would work to make qui tam relators the partners that they should be with the Government in the prosecution of this fraud?

Ms. BAIRD. Yes, I think that is a very worthy effort. I even know some of the or at least did one of the principal lawyers for qui tam

relators, who is a fine lawyer, so I think that there should be every opportunity to work together and make that a compatible fit.

If I may digress from that a little bit, to give you a better sense of some of my own thinking on some of these things, I very much believe that Government should extend its reach through the use of the private sector. And I believe that when it comes to extending the Government's financial resources through calling upon business to do things, it serves the public interest.

I made one comment to that regard when I talked about extending the ability of legal services corporations to serve low- and middle-income people by calling on the private sector to provide legal services to those people, and this is very much a piece of that.

You are taking people in this country who are in a work force and you are saying to them, you have a special responsibility when you are working on Government projects to take hold of fraud, to raise it, to surface it, to—

Senator GRASSLEY. I think that is very idealistic, and I hope that is what materializes, and I hope you can help promote that attitude, but you have got to know that, even in Government, there is a great deal of peer pressure to go along to get along, not make the organization look bad, and not be a traitor to the cause. Obviously, even in the private sector, I would imagine that is even greater peer pressure, to go along to get along.

Let me ask you if you share the view of General Electric and other contractors that whistleblowers should be required to disclose their allegations to their employer before being allowed to file qui tam suits?

Ms. BAIRD. It is not a matter that I have taken a position on before and it is one I would have to look at. In the Government, I don't really understand what the issue is there.

Senator GRASSLEY. The Justice Department has the option of joining a qui tam suit. If DOJ declines, the qui tam relator proceeds on his or her own. I am sure you know that. Currently, the Department joins only about a quarter of these qui tam suits. Do you think that this is a high enough rate of participation by the Department of Justice?

While I am asking that, what factors would you suggest that DOJ look at in deciding whether to join a case?

Ms. BAIRD. To reflect first on whether it is a high enough percentage, it is difficult for me to do that because I am not familiar with the cases. But I will address the second point, which may give you some sense of how I would look at whether that is a high enough percentage, if I were in the Justice Department.

It would seem to me that the factors would relate to whether the qui tam plaintiff is able to make adequate progress on the case themselves, or whether they need the support of the Justice Department; on the other side of the equation, whether the Government has a distinctive interest in the issue at stake in the case or in the program at stake in the case. For example, if there was a particularly sensitive black box classified program that was going to be at issue in the case, the Justice Department would presumably have a stronger interest in having a larger role in that case and the information there.

I am not sure how the relationships are developed in terms of access to classified information, but that would be a very sensitive area, I would think, and I am sure you share that concern. But those are the kinds of factors, it would seem to me, that would make sense, and I would say that it would be inappropriate for the determination to depend on whether or not you like the lawyers or whether or not you think someone is troublesome.

Senator GRASSLEY. There is a lot of movement in the use of qui tam in medical fraud cases. There is a possibility maybe Aetna some day could be involved in some of those cases. How would you handle it, if there was such a case filed in a medical situation under the False Claims Act?

Ms. BAIRD. Any case or a case against Aetna?

Senator GRASSLEY. I am just saying that there is a possibility, since they are in this business, that there could be such a false claim case filed against them. But generally speaking, not precluding Aetna, but how would you handle those cases, if there were insurance companies involved in qui tam suits?

Ms. BAIRD. From a recusal point of view? I just want to make sure I answer your question.

Senator GRASSLEY. That is one of my interests, but beyond that, if you didn't recuse yourself.

Ms. BAIRD. Well, I would certainly have no problem participating in qui tam cases wherever they might appropriately be brought. As I explained, I would have a recusal issue if Aetna were a party to the case. Beyond that, I think is really hard to anticipate what other kind of recusal issue there might be.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator METZENBAUM. Our next questioner is Senator Leahy.

Ms. Baird, I just want to say that one of the very significant questions that Senator Grassley asked you had to do with whether or not you agreed with GE's position of requiring the employee to have to make a disclosure first to the employer before moving forward on a qui tam case. You indicated you hadn't really thought too much about that subject. Would you be good enough to think about it, and when I come back to it in our next meeting, I would like to ask you that question again. I think it is a very significant question and I think your answer would be very significant.

Ms. BAIRD. OK. I would be happy to do that. Thank you.

Senator METZENBAUM. Thank you very much.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Ms. Baird, everybody has been asking you questions on the undocumented aliens, and many of the questions I would have asked have been asked already. I apologize for being gone for a little bit of this meeting.

You may have already answered this, but just so I understand, you had two undocumented aliens, a husband and wife. Approximately how many hours a week was the husband expected to work, on an average?

Ms. BAIRD. It really varied.

Senator LEAHY. What would be typical, or is there such a thing?

Ms. BAIRD. Well, it is hard to say. I would say less than 40, but beyond that it is hard for me to get very specific.

Senator LEAHY. And with his wife, what would be a typical week?

Ms. BAIRD. She typically worked an average of about 40 hours a week.

Senator LEAHY. And how much were they paid?

Ms. BAIRD. They were paid initially, I believe, \$2,000 a month plus their room and board.

Senator LEAHY. So about \$250 a week each?

Ms. BAIRD. I think that's about right.

Senator LEAHY. \$4,000 a month for the two of them?

Ms. BAIRD. No; \$2,000.

Senator LEAHY. \$2,000, I'm sorry. So \$250 apiece, and some weeks more than 40 hours, some weeks less, is that—

Ms. BAIRD. Well, she worked on average 40 hours. He worked less. It probably wasn't very typical that she would work more than 40 hours, because there was a lot of flexibility during the day. I mean my son was in school a few hours, that kind of thing, so that was really an average. Yes, some weeks it would probably be a little more and some weeks less.

Senator LEAHY. Actually, I was thinking when some of the questions were asked about the Immigration and Naturalization Service, that INS is a service that has had some terrible internal conflicts during the past 10 years. It has had some pretty amazing management problems. I say that, knowing that the eastern region, where Vermont is, has been really the better region for the INS. INS operations in Vermont, in fact, which is a border State bordering Canada, has been very, very good. But across the board, at least the oversight hearings we have had in this committee and in talking with other Senators from other parts of the country, the INS has had some real problems.

Have you had a chance to look at that? And if so, what aspects of INS do you feel need major reform?

Ms. BAIRD. Senator, I really haven't had the opportunity yet to get very deeply into that and would look forward to talking with the committee and working with the committee on that. I do understand that there are some real management issues and I would hope to address those.

Senator LEAHY. Would you feel, because of your experience before this committee and the matter you were just discussing, that you would be deterred in any way from carrying out a major revamping of INS, if that was what your study showed was needed?

Ms. BAIRD. Absolutely not. The INS has been very straightforward in all of this and I would have no feeling one way or the other that this would in any way affect my working relationship with them or plans for them.

Senator LEAHY. There have been a number of people who have raised questions about mandatory minimum sentences. I have in some areas supported the idea of mandatory minimum sentences, as most of the members of this committee have. We have felt that there are some types of crimes that should to be addressed that way.

On the other hand, there is also a concern that mandatory minimums are used as a wedge often against people who are less in-

volved in the crime, especially at times when prosecutors are unable to go after those who are more involved.

The senior Federal judge in my State, District Judge Billings wrote an opinion that mandatory minimum penalties deny the judges the right to bring their conscience, experience, discretion, and sense of what is just into the sentencing procedure. How do you feel about mandatory minimum penalties?

Ms. BAIRD. Mandatory minimums have, to my mind, been used to some good end, but I think the countervailing difficulty is providing fairness. I have heard stories of juries being reluctant to convict, because they think that the mandatory minimum is too high.

So I think that it is something that we would have to look at very carefully, but I believe some very good purposes in making a strong statement about the potential penalties for committing crimes. I think there are some very good purposes they can be put to, also, but the fairness issue has got to be front and center, too, I think, as we work through that balance, and I think this is something that I would want to talk through with the committee and understand what the history and development and experience has been, now that there has been some experience with this.

Senator LEAHY. Earlier today during the hearing, there was some discussion of the feeling that there would be a new crime bill worked out, the administration may have recommendations of a crime bill, and this committee will, too. Do you feel that the issue of mandatory minimum sentences should be looked at again?

Ms. BAIRD. I really haven't thought about that, Senator, whether that should be looked at as part of this crime bill. I don't know if you are suggesting by your question that we should talk about it in thinking about how to—

Senator LEAHY. Well, is it something that is automatically off the table, or is it something that at least can be looked at?

Ms. BAIRD. I would think that these issues are all ones that should be discussed in trying to identify the best way to get a crime bill through quickly that does the right things.

Senator LEAHY. We have another thing in that same area, the civil forfeiture statute, which can be a powerful tool certainly in organized crime prosecutions, definitely in prosecuting drug operations. It is also a power susceptible to abuse. We read stories of the prosecutor who likes the old Corvette that was seized. Now, there may have been a prosecution that would have been brought, whether or not the subject ever had a yellow Corvette or not. The Justice Department has airplanes, one available to the Attorney General that was seized from a drug kingpin. I would assume that the prosecution would have been brought about, regardless of that.

But you can understand where some may worry that the property being subject to forfeiture may drive the prosecution, rather than the crime. We have forfeiture of homes for relatively minor drug cases, and the home is often the sum of an average American's whole life work.

There aren't the procedural protections in forfeiture cases that you have in criminal proceedings, the assumption of innocence and so on. There are a couple major cases before the U.S. Supreme

Court now on it. Is this another area that should at least be looked at, if we are going to go into a new criminal code?

Ms. BAIRD. Yes, I think it is an area we should look at very hard. I don't know whether it is an area that we could address without slowing down a major reform of the criminal law, but it is an important area. Again, this is a very creative law enforcement tool that was put into place to try to seize some of the fruits of the crime, if you will, and millions of dollars have been brought in in doing that. But there have been many stories of abuse, stories of someone's grandmother's house being taken away from them and some real unfairness and abuse of the power that has taken place, and I think that—

Senator LEAHY. Would you allow that there is a difference or should be a difference, at least, in the thought process of the prosecution in forfeiture between seizing of an automobile or a speedboat and seizing someone's home?

Ms. BAIRD. It is a very interesting question and I don't know how it has been considered already. I am not familiar enough with the debate that developed there to know whether there is already some allowance for circumstances with respect to someone's home or particularly a relative's home where the relative might not have been involved in the criminal activity, but there might have been some connection to it.

Senator LEAHY. Irrespective of whether there are guidelines now, and even prescinding from what those guidelines might be, do you feel that if you were Attorney General, it would be incumbent upon you to, at least, review and find acceptable to yourself, as Attorney General, what the guidelines might be in civil forfeiture?

Ms. BAIRD. Yes, absolutely. Absolutely, and I think that the house issue—

Senator LEAHY. If I might, excuse me for interrupting, but might I also add to that question do you feel that it would also be your responsibility, as the new Attorney General, to review specifically these forfeiture guidelines, which you may well end up agreeing with, but at least you feel that it would be a major responsibility of the Attorney General's law enforcement requirements to at least review them?

Ms. BAIRD. Yes, absolutely, and I say that because of the issues you raise and also because I understand from local law enforcement that there are many questions and difficulties that have arisen in the relationship between local law enforcement and the Federal Government on this issue, and in fact between different Government agencies. It seems to me that it is an appropriate moment to review how this is functioning and how it might best function.

Senator LEAHY. There is a bank in Atlanta, the BNL Atlanta Bank. This was a bank involved in a long series of, I think, policy mistakes which ended up with a great deal of money going to Iraq. In fact, one of the results of it is that you and I and every taxpayer in this room are paying this year part of \$1.9 billion in foreign aid to Saddam Hussein. If we would look at the electronic town meetings, at least one candidate spoke this year and asked for a vote on how people feel about \$1.9 billion in foreign aid to Saddam Hussein, it probably wouldn't get overwhelming support. But we are doing it.

Now, in that case, the White House Counsel's office made calls directly to the U.S. attorney in Atlanta to express interest in the investigation. This is the White House Counsel's office. The notes of a Treasury official indicate that the White House was concerned about the embarrassment level of the case, but also noted with some satisfaction that the Justice Department was putting Iraq on the back burner.

The Justice Department released a letter to the Atlanta court, knowing that that letter misrepresented the CIA's knowledge about whether BNL's parent bank in Rome was aware of the scheme in the BNL Bank in Atlanta, and then the department refused to release a subsequent letter correcting this misrepresentation.

Without going into the intricacies of that investigation, what would you do to ensure that political considerations—White House considerations—would not come in and interfere with the legal strategy and prosecutorial decisions of the Justice Department, which should be untainted by such political manipulation?

Ms. BAIRD. Senator, I agree wholeheartedly with your conclusion, and I think the most important thing I can do, the single most important thing I can do, is to require contacts from the White House into the Justice Department to go through very limited channels of the Attorney General, or the most senior officials in the Justice Department, so that there is no attempt to influence other people who are less able to fend off inappropriate contacts at the lower levels of the Department.

With respect to that particular case, without commenting on the case, because I intend to take a very close look at what has happened there, but in terms of process suggested by that case, I think it demonstrates the need for a different kind of coordination between the Justice Department and the CIA. And I have already had some initial conversations with Jim Woolsey, who is designated to be Director of the CIA, about how we might get at that, and that might include he and I getting together for half an hour a week to make it clear to people that we are intent on coordination between those agencies; that if there are things the CIA knows that we don't fail to inform a court when we are prosecuting someone else. And I don't know the circumstances here, I don't know what happened, I don't know what was right or wrong because I haven't yet studied the case or had the information made available to me, but I think it is very, very important that we have the appropriate coordination between these two agencies.

Senator LEAHY. If I recall from my 8 years of experience on the Intelligence Committee, the CIA may have a harder time coordinating within itself, because of the compartmentalization, to get some of these answers back and forth. I don't expect there would be much difficulty with the Attorney General and the Director of the CIA to do that kind of coordination. The CIA Director may have trouble coordinating his own agency, and knowing Mr. Woolsey as I do, I suspect that he will make a very strong effort to do just that.

Ms. BAIRD. Well, I'm sure he will, and I think that there is an issue here of coordination so that the Justice Department isn't speaking to the CIA with many voices coming at it with different

requests, and therefore the process not really ensuring that the appropriate information goes back and forth.

Senator LEAHY. I will save my other questions on the *Bray* case and a number of other issues for my next round.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Before we move to Senator Specter, again, we want to give you an opportunity to stretch your legs. We will recess in a moment, but I want to make it clear we are going to try to adjourn for today at 4. I expect we'll probably have four more of our colleagues have an opportunity to ask questions in this round. Obviously, we are not going to finish the round today, but we'll move as rapidly as we can.

We'll now adjourn until quarter after; 7 or 8 minutes. [Recess.]

The CHAIRMAN. The hearing will come to order.

As I said, we'll attempt to get four more questioners in before we recess today. When we recess today, it will be until Thursday morning. I can't tell you the exact time at the moment because there are going to be party caucuses taking place; it will be sometime, in all probability, between 10 and 11 on Thursday that we will reconvene, and we will proceed with all deliberate speed to bring this to a conclusion.

I realize we have witnesses who wish to testify. We are grateful for their appearance, but I should tell them now that they will not get on today; it will not be until Thursday and most assuredly they will not be on until, it looks to me, like mid to late Thursday afternoon, the way things are moving along.

But having said that, let us now begin with the questioning by the Senator from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Baird, I join my colleagues in welcoming you here.

Ms. BAIRD. Thank you.

Senator SPECTER. The constitutional responsibility on advice and consent is a serious one, and there are a fair number of questions which we need to ask and answers which we need to receive.

I say at the outset my own preference that Senators not announce positions before the hearings are concluded. On some occasions in the past, as many as 11 of 14 members of the committee had announced positions on Supreme Court nominations prior to conclusion of the hearings, which I think creates a problem, and certainly a misunderstanding in the public mind. I also want to say that I do not consider the issue on immigration or the employment of aliens to be a hypertechnical matter. I believe it is one we have to take a look at to see what the facts are, and there are many, many issues to be discussed.

I believe that the position of Attorney General of the United States is a position second to none in Cabinet rank, a position of enormous importance. The prosecutor has tremendous power, and there are so many other functions of the Department as well. I have quite a number of subjects that I hope to cover before the hearings are finished, but I want to pick up on some of the subject matters that the chairman, Senator Biden, spent his entire time on.

The way the employment issue was handled, Ms. Baird, I think is every bit as important, if not more so, than the employment of

the illegal aliens at the outset; the issue of taxes, including Social Security, unemployment, withholding, income tax, and other kinds of taxes are also of importance.

I'd like to focus on the sequence of events. It may be that it would be preferable to give you an opportunity to submit these answers in writing after some consideration, and should you find the need to do that at any point, I would be pleased to move on to other subjects and give you a chance to submit them in writing because, as you have testified, you did not handle these matters directly, but you are functioning as a result of what you have heard from other people. So it may be that you would prefer to pause before responding and to take the time to write the answers down.

Let me focus on one particular delay point; that is from the time that you employed this Peruvian couple in July 1990 until April 20, 1991, when your husband, Professor Gewirtz, first contacted Thomas Belote, Esq. Let me say at the outset that after reviewing the files and talking to staff who had talked to Mr. Belote and others, I felt it necessary to call him myself. I did so, and talked to him over the luncheon recess, trying to put the facts together. It is a fairly complicated picture, so I repeat, you may want to take some time in responding.

Mr. Belote advised me that he had received a telephone call from Professor Gewirtz earlier, at a time he could not place with precision. He felt it was some months before, and he then called Professor Gewirtz in the presence of Federal authorities who were conducting the regular background investigation, and Professor Gewirtz, your husband, thought that the conversation had occurred late in 1990.

But my question is why was there such a lengthy delay between the time of employment until your husband first saw Thomas Belote on April 20, 1991?

Ms. BAIRD. My understanding is that my husband initially spoke to a number of lawyers to try to make sure that the lawyer he hired was the best lawyer. I could give you a couple of names of other lawyers that he talked to in that period—Mr. Richard Williams, Mr. Rabena—and he then, as I understand it, had a long telephone conversation when he decided to use Mr. Belote, and in that conversation, Mr. Belote told him what he needed to do to collect all the documentation that would be necessary. He went through with him exactly what they would do in pursuing the process and what documentation he needed to collect before the Labor Department application could actually be made.

So my understanding is that many months in advance of his meeting with Mr. Belote, he was having long conversations with him and had initiated the process with him, but Mr. Belote's offices are in Ridgefield, CT, which is more than an hour from our home, and so I believe he was dealing with him over the phone in the initial period as he initiated the process.

Senator SPECTER. Well, Ms. Baird, I would ask you to doublecheck that, because Mr. Belote said to me today that there was only one telephone call, which was very preliminary in nature, and that he had not been retained. He suggested to me that there was not a recitation of documents to be obtained and that the first

time Mr. Belote really got down to business with Professor Gewirtz was at the April 20, 1991, meeting.

Ms. BAIRD. And that he hadn't told him about the document collection before that? I'll have to check that with my husband, but my understanding is that in that period the documents were being collected.

Senator SPECTER. Well, it may be preferable to ask these questions directly of your husband——

Ms. BAIRD. Yes.

Senator SPECTER [continuing]. And we may find that most expeditious.

Ms. BAIRD. Well, I am happy to get you written answers to these, as you've suggested, if that would be helpful to you.

Senator SPECTER. Any way you wish to handle it, at your discretion, to be sure as to accuracy.

On the question of the documents from Peru, I asked Mr. Belote about that specifically, and he told me that none was in issue; that if you talk about a birth certificate, that that would not be necessary for many years, at the time of the green card issuance, and that the kinds of documents which he talked to Professor Gewirtz about related to proof of prior employment by this couple, or this woman, relating to child care.

Ms. BAIRD. Right, that is right. I had thought a birth certificate was also something that she had to get, but the principal documents, as I understood it, were ones which verified her prior child care experience, and I believe her education, also.

Senator SPECTER. Well, you testified this morning about education, and I'd ask you to doublecheck that because Mr. Belote said to me that the materials on educational background, which had some indirect relationship to child care, were not really probative, and that he was not interested in those. And that, of course, is important to the issue of delay.

The second time period which is pronounced occurred between April 27, 1992, and October 13, 1992. On the chronology which you have furnished, there was a filing shortly before April 27, 1992, and then as Mr. Belote told me, the petition was prepared and submitted to Professor Gewirtz. Then, when Mr. Belote heard nothing, he wrote Professor Gewirtz on July 23 and received a telephone call back from him. Professor Gewirtz then did not send the papers in until October 13, 1992.

So the question focuses on why the lengthy delay between April 27 and October 13.

Ms. BAIRD. Senator, I can't excuse that, and I can't really explain it, because it wasn't me. I was trying to respond to Senator Biden's question by making it clear that it had nothing to do with any question of sponsorship because we always intended to continue to sponsor her. And beyond that, I can just tell you that my husband didn't give it adequate attention, and I am obviously unhappy about that, but I can't really explain it.

Senator SPECTER. Well, it may be that we'll need to hear from Professor Gewirtz. Perhaps, however, you want to focus on the questions, because your explanation has been that you assumed that once the initial papers were filed, it was all right to continue

the employment. But I think it does bear analysis as to how expeditious, the kind of diligence that was pursued there.

Ms. BAIRD. I would say that it was not all right to continue the employment, and I would want you to understand that. I believe I said this morning that I had allowed myself to accept that this process—I used the word “regularize,” and Senator Simpson has pointed out that’s a term of art; I wasn’t aware of that—but I wouldn’t want to suggest that I thought it was OK to continue the employment. What I have said is that with the filing of the papers, we disclosed the employment, but I would not want you to think I was suggesting that I thought it was OK.

Senator SPECTER. Ms. Baird, if you hadn’t been appointed Attorney General-designee, and had the matter not been brought to a head by these hearings, would action have ever been taken to pay the Social Security and pursue the matter, in light of—

Ms. BAIRD. Yes; we always intended—

Senator SPECTER. Let me finish the question—

Ms. BAIRD. I’m sorry.

Senator SPECTER [continuing]. In light of the fact that the woman left your employment? You say you always intended to make the payments. How so?

Ms. BAIRD. We always intended to make the Social Security tax payments when the Social Security numbers were obtained. We were keeping records to do that, and that was always our intention.

Senator SPECTER. But if she terminated her employment, and she wasn’t there any longer, and these applicants did not go forward, she wouldn’t have a Social Security number, and the process would not be in place to make the payments, would it?

Ms. BAIRD. Well, we would be able to make the payment once she got the Social Security number.

Senator SPECTER. But since she terminated her employment with you—

Ms. BAIRD. Well, our hope still is—as one sponsors someone, the hope is that they will come back to work for you when they get their papers. And at that point in time, when she got her papers, we could pay the Social Security taxes, the back taxes, and have her in our employ again.

Senator SPECTER. And if she hadn’t come back to work for you, then how would you pay the—

Ms. BAIRD. We have always intended—I can’t tell you, other than my sincere commitment, that we always intended to pay the taxes, that we kept records so that we could pay the taxes. And I can’t prove to you we would, but I can tell you most sincerely that that was the intention.

Senator SPECTER. Ms. Baird, I notice in the sequence that you have provided that you had two other people in similar positions, and I won’t repeat their names now, but in both cases unemployment taxes were withheld, but in the case of this woman, unemployment taxes were not withheld.

In response to a question from Senator Heflin, you said that it was discretionary as to whether to withhold, which is a surprise to me.

Ms. BAIRD. No; I didn’t say the unemployment taxes. He was talking about income tax, and—

Senator SPECTER. I'm talking about income tax, withholding of income tax.

Ms. BAIRD. My understanding is that for domestic household workers, one is not required to withhold income tax.

Senator SPECTER. I'd like you to provide us the basis for that.

Ms. BAIRD. I'd be happy to do that.

Senator SPECTER. Let me move to one other subject in the time I have remaining. And I just saw this article today, so I didn't have a chance to talk to you about it when you paid me a courtesy call. There is an article in the Nation and also an article in the Hartford newspaper which relate to activities that you had with the Ronan-Edgehill Neighborhood Association. I ask you first to what extent you participated, if at all, with that association.

Ms. BAIRD. That association is an association of all the people who live in our neighborhood, presumably including Congresswoman DeLauro, because she lives in the neighborhood; I think she is probably within the geographic bounds. It is not a membership organization beyond that, although occasionally one pitches in \$25 to the cost of things. But my activities with it were fairly limited given my time constraints.

Senator SPECTER. The Nation has an article as of January 1, 1993, which is critical of the activities of the association with respect to a woman named Marjorie Eichler, who has 10 adopted and foster children, all of them, according to this article, with disabilities, and all African-American or Latino, when she made an effort to buy a house near Albertus Magnus College on Huntington Street. The Nation comments about a lawsuit which was initiated by the Ronan-Edgehill Neighborhood Association which was joined in by the Department of Justice, according to this article, the Department of Justice said that the association's campaign, "clearly amounted to family status discrimination and possibly racial discrimination as well. The case is pending in Federal court."

I would be interested in your comment about it.

Ms. BAIRD. I knew nothing about the activity that led to the lawsuit or the lawsuit, except what I have read recently in the paper, and I can't tell you anything really beyond that. There is a house in the neighborhood that has a number of disabled children living in it. I don't know what the situation is behind that lawsuit.

Senator SPECTER. My time is up, so I will defer on that until the next round of questions.

The CHAIRMAN. On that point, Senator, as I understand it, what occurred is that the neighborhood association brought a suit under the zoning laws, trying to prevent the use of the house by this woman and her 10 foster or adopted children; that then, after that suit was brought by the housing association, Mrs. Eichler filed a housing complaint with the Federal Government alleging that the neighborhood association was attempting to bar her and was being discriminatory in violation of the Fair Housing Act. The Department of Justice filed an amicus brief with her to say, yes, the neighborhood was discriminating against her. Then the neighborhood association dropped the suit, I assume under the city code, to prevent her from living there. The Department of Justice wanted to settle so that her legal costs were in fact paid for by the neighborhood association, among other things, I suspect. The real con-

troversy that continues is whether or not that lawsuit, which is not settled—the lawsuit by the Department of Justice against the neighborhood association of which you, among others, are a member—whether or not the failure to settle that reflects in any way on your attitude toward whether or not the action taken by the civic association was proper or improper.

And I want to make sure I understand this. In our interviews with you, as well as all the other principals, including the president of the neighborhood association and others, everyone that we interviewed said that you personally were no party to any of this.

Ms. BAIRD. That's right.

The CHAIRMAN. Is it your testimony that you took no active or even inactive part in the decision of the neighborhood association to try to block this woman from being able to use this house?

Ms. BAIRD. That's right. I had no idea she was attempting to use the house. I had no idea that the neighborhood association was considering the question.

The CHAIRMAN. When did you find this out?

Ms. BAIRD. After the lawsuit with the Justice Department, or the lawsuit that involved the Justice Department, and I was reading the local paper, and I read about it in the paper. I don't think I've even discussed it with anyone in the neighborhood.

The CHAIRMAN. Let me check with investigative staff. [Pause.] That comports with what our investigative staff has determined, that there is no one that we are aware of who has alleged that you had any knowledge, participation, or any relationship with this suit. I just want to make sure—you are under oath—that that is your testimony—

Ms. BAIRD. Yes, that's right.

The CHAIRMAN [continuing]. That you have been no party to this, that you learned about it when you read it in the newspaper?

Ms. BAIRD. That's right.

The CHAIRMAN. All right.

Senator SPECTER. Mr. Chairman, if I might make just one addendum.

The CHAIRMAN. Please.

Senator SPECTER. Senator Brown has handed me a note saying that his understanding of the law on withholding tax is that there are exemptions for household domestics, but not an exemption for drivers. So we'll pick this up in my next round.

The CHAIRMAN. I think Senator Brown was a tax lawyer. I don't know.

Senator SPECTER. I think he was a driver.

The CHAIRMAN. Was that in your former incarnation?

Senator BROWN. That's an awful thing to say about anyone.

[Laughter.]

The CHAIRMAN. Well, staff is researching that as well to find out what the answer is.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

Let me join in welcoming our new colleagues to the committee. I know that Senator Pressler, Senator Feinstein and Senator Moseley-Braun were eager to come onto the committee, Mr. Chairman, and we welcome them here.

The CHAIRMAN. I assured them we'd have no controversial nominations. [Applause.]

The CHAIRMAN. I am supposed to tell you all that showing emotion in any way is not permitted. You have to remember, this is Washington. [Laughter.]

Senator SIMON. And we welcome the Attorney General designee here.

Let me just comment first that in opening his remarks, Senator Biden said the record as a whole should be weighed, and I think that is one of the things we have to keep in mind. I think it is clear the committee is concerned, and I think the public is concerned, by the immigration matter. And just to buttress that, Senator Metzenbaum mentioned phone calls; I just asked my office—and I don't decide these things by phone calls, I want you to know—but in our Washington, DC, office, we've had 84 calls against, and 3 for you; in the Chicago office today, we've had 81 against, 4 for you. Clearly, there is public concern.

Balancing that, it seems to me, are, number one, a sensitivity to the powerless that your record shows, and I think that is very important in an Attorney General.

A second factor that, at least for me, is significant is your desire—and you mentioned Ed Levi as an example—your desire to depoliticize the office, and I think that is important.

Since the neighborhood association has just been talked about—and I know nothing about this neighborhood association—there are good neighborhood associations and there are bad neighborhood associations.

Have you heard that this neighborhood association had ever had as its purpose, frankly, to keep blacks out of the community or Hispanics out of the community or anything like that?

Ms. BAIRD. No, I haven't. And I would just comment—and I am sure Congresswoman DeLauro could say this in a more impassioned way than I do, in fact, I think she even lives on Huntington Street—I would just comment that most of us who live in this neighborhood have chosen to live in the city of New Haven, which is a city with tremendous racial and poverty problems, and we have chosen to live there, rather than the suburbs 20 minutes away, so that we don't run away from the problems of the community.

The reason that there is a neighborhood association is directed more toward creating a cohesion and keeping people in the city, than it is toward excluding people. Although, as I say, I haven't had the time to be very active with the association, but I would say in our case and in the case of certainly most of our neighbors, we have made a very difficult and conscious decision to stay in the city in a community which is tremendously blighted.

I think New Haven has the highest infant mortality rate in the country. The drug problem is tremendous. I mentioned the shooting in the school playground a block from our house. These problems aside, we live there because we have a commitment to this community, so it would be very contradictory to that for us to form an association to exclude blacks. We could exclude ourselves much more easily.

Senator SIMON. If I may shift to another area—and when you get this far down the line, and my colleagues can appreciate it, you are scattering your shots on a variety of things—I was a little concerned about your response to Senator Metzenbaum on the matter of recusing yourself.

If you have a case, if something comes up before you, as Attorney General, where you think one of your former clients, Aetna, General Electric, whoever it is, is in the wrong, and your new client, the American public, demands that you take a stand against a former client, will there be a recusal on your part or a reluctance to take a stand against a former client?

Ms. BAIRD. There would certainly be absolutely no reluctance. I think the way the situation is more likely to develop is that before I know the facts, to know what my opinion would be, I would know that Aetna or GE was a party and I would take it to the ethics office so they could tell me whether or not I could participate, because I think your question suggests something which would not be confidence-creating, which is that I would know whether or not I wanted to be in or out, based on how it would affect them, and that wouldn't be proper.

Senator SIMON. Let me be more specific, and you may or may not wish to answer this at this point, but I think it is a question you will ultimately have to address. We have generally had, the Attorneys General have taken the stand that the McCarran-Ferguson Act, which gives certain antitrust exemptions to the insurance industry, should be either repealed or modified. Even Ed Meese took that stand. This is an extreme, I have to admit.

You have, I am pleased to say, a minority within the insurance industry who agree that there should be a modification, and I hope one of these days a majority. But I think it is important that the Attorney General of the United States take a stand on an issue like this. Is this something you would feel comfortable getting into?

Ms. BAIRD. Generally, questions like that might well be ones I could get into. The McCarran issue, I have been told by the ethics office, may be one I can't get into, because I have been involved in an issue in litigation there, but I don't know the answer to that. If I didn't, I would assure you that the Deputy Attorney General would. I realize that is only a step and not an answer to your question, but until the ethics office gave me a definitive opinion on McCarran-Ferguson reform, I really couldn't tell you.

Senator SIMON. Let me just add, my hope is that, subject to the approval by the ethics committee, this is an area where I would like to see the Attorney General take a very strong stand.

Ms. BAIRD. Senator Metzenbaum and I have discussed a little bit the question of exemptions to the antitrust laws, industry exemptions. You know he is also interested in the baseball question. I think generally we should be looking for ways to rationally apply the antitrust laws to industry, rather than looking at exemptions, more comprehensive kinds of carveouts.

I think that there is as good deal of consultation I would like to do with this committee and with others interested in antitrust enforcement, because we really are at a point where we ought to reinvigorate our antitrust enforcement, where we ought to be taking a very hard look at the implications of some of the activities in the

market and where we need antitrust enforcement in some of the resale price maintenance and price-fixing areas, we need some real attention.

I think generally my approach to this area would be to try with skilled antitrust lawyers, the head of the Antitrust Division and with members of this committee, to try to develop some current day theories of antitrust that we want to pursue in a very vigorous way, in order to improve competition and the resulting effect and benefit to consumers.

Senator SIMON. Shifting to another area, the Inslaw matter, you have probably heard about, I would ask, first, that you personally read the House Judiciary Committee report, and, second, Judge Bua was appointed by Attorney General Bar to take a look at that. Judge Bua is holding off submitting that, because of the new client relationship the current Attorney General has. You will be receiving that report in a very few days.

My request would be that you personally take a look at both the House Judiciary Committee report and Judge Bua's report to you, if you would.

Senator HATCH. Would the Senator yield on that point just for a second?

Senator SIMON. I would yield.

Senator HATCH. I endorse that. I believe that the Inslaw matter has to be looked into, and if the Justice Department is wrong and has been delaying and should have paid these people, and certainly the House report believes that, I think you ought to resolve that as quickly as you can and cut out the delays, if it is correct, the delays to break this business and the people who have been part of it.

I meant to bring that up in my first part, so I am glad that the distinguished Senator from Illinois has brought that up, and I believe it is a very important thing. The integrity of the Justice Department is very important, and sometimes we found in the past that the Justice Department won't investigate some things that ought to be, and they sometimes drag things out at a tremendous cost to the litigants, so that they gradually, by attrition, have to give up, and I think that is a horrendously wrong thing to do.

So I would just like to have you look at that right off the bat and make a decision on what really needs to be done there.

Ms. BAIRD. I can make that commitment to both you. It is definitely high on my priority list, both for what it says about that particular case and what it says about the work that needs to be done in the Justice Department to make sure that things like this are not about to happen.

Senator HATCH. I thank my colleague from Illinois for his courtesy.

Senator SIMON. You bet.

You mentioned in your opening statement that the Justice Department has 91,000 employees. That is no small empire to manage. It is one thing to be chief counsel to someone. It is another thing to manage 91,000 people. Do you feel you have the management skills to handle something like this?

Ms. BAIRD. Senator, I do. I think that the skills one develops, I have been part of the senior management team managing a com-

pany of 45,000 people. I obviously haven't been running that company, but I have been deeply involved in the issues ranging from human resource and administrative issues to the substance of businesses for almost 3 years now.

I also think that management skill is applicable to broad populations often in the very way that it is applicable to smaller populations. I have a staff myself of only about 350, but, as I say, I have been part of the small group of management working with the chairman of Aetna, managing a company of 45,000 employees all over the country.

That being said, let me also comment that I can't think of another Attorney General who had ever managed maybe even as many people as I have. Although there have been Attorneys General who were Deputy Attorneys General, and they have had a similar experience to mine, being part of the management team. I may not be completely accurate here, but I think that most of the people who have come in as Attorneys General have been either prosecutors with offices maybe the size of mine or smaller, or have been lawyers in private practice who didn't really have management experience.

I would think that my management experience being in two very well-managed companies, regardless of what one thinks of their policies, is probably significantly greater than most of my predecessors.

Senator SIMON. The Bureau of Alcohol, Tobacco, and Firearms is in the Treasury Department, but obviously has a relationship to the problem of crime that you have touched on. You mentioned the Brady bill, and I am pleased with your support of that.

It is very interesting that, in the 1980's, we had a reduction of 13 percent in the number of personnel at the Bureau of Alcohol, Tobacco, and Firearms, and an increase of 59 percent in gun dealers in the United States.

I mention this simply to suggest I think you and your counterpart in Treasury, as well as perhaps others in the administration, maybe Bob Rubin, need to get together not just on the Brady bill, but on a strategy for dealing with this—and there are other little items like this that could be mentioned—for a strategy in dealing with this whole question of the proliferation of weapons in our society and what that means in New Haven, one block from your home, and what it means in Washington, DC, not very many blocks from where we are now.

These are softball questions, but we want to have hardball followup now.

Ms. BAIRD. But you are quite sincere, and I appreciate it.

Senator SIMON. Would you be willing to participate in such strategy, and would you be willing to lead in seeing that we develop some kind of a strategy to move on this weapons problem?

Ms. BAIRD. I think it is a very good suggestion. One area that, as you know, Governor Clinton is already committed to is a ban on semiautomatic assault weapons. I had a conversation with Senator Feinstein, where she brought the need to vivid relief with me, describing a situation of the police literally being outgunned by the drug dealers, two policemen walking up to an apartment and, as they had their guns drawn and their full protective gear on, were

gunned down by a semiautomatic by the person that was in the apartment. I think this is a very, very serious issue that we need to look at hard, and I think your suggestion is a very good one.

Senator SIMON. One final question before that light turns red. You mentioned the office of Attorney General not being used for partisan purposes. I think that applies and traditionally it has applied to the Secretary of State's office, to the FBI Director, and to the CIA Director. It has not in our tradition applied to the drug czar. I voted against both Bill Bennett and Bob Martinez, because they would not commit to avoiding this kind of partisan activity. In fact, both were very active at the New York Democratic Convention. The first leading spokesperson for the Republican Party was the drug czar.

Nationally, one out of 3,000 Federal employees is a political appointee. It varies from office to office. But the very top has been the office of drug czar, where 42 percent have been political appointees.

Would you be willing, before the appointment of a drug czar is made, to make a commitment that you would be willing to advocate to the administration that we professionalize this office? I notice in the morning paper, Bill Barr said we ought to get rid of the office. And if it is operated the way it is right now, we ought to get rid of it. But it could be an important tool, if we really did what needs to be done. Any reaction?

Ms. BAIRD. I think I would be very prepared to recommend to the President-elect that it not be a political office, that a professional be appointed. I obviously can't tell you what he would conclude, but I think that this area is analogous to fighting crime generally, although I appreciate that the drug czar's responsibilities include the coordination of educational efforts and the broad range of efforts that the government undertakes to try to get at drugs. But I think that it is a recommendation that I am very comfortable making, have thought about it myself in terms of how to make that office most effective.

Senator SIMON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Before I yield to our friend from Colorado, I should note that title 46 of the United States Code, section 3401, defining what constitutes wages, says that, for purposes of this chapter, the term "wages" means all remuneration, and it goes on and says "except that such term shall not include remuneration paid in subsection 3 for domestic services in private home, local college club or local chapter of a college fraternity or sorority." And then in the regulations, it says,

In general services of a household nature in or about a private home includes services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnace men, caretakers, handymen, gardeners, footmen, groom and chauffeurs of automobiles for family use.

So it is not required, to the best of my knowledge, under the Federal law to withhold wages for income tax purposes for either of the persons who were in your employ.

Ms. BAIRD. Thank you.

The CHAIRMAN. The Senator from Colorado.

Senator BROWN. Thank you.

It seems a bit unusual to welcome you, particularly after you have spent a day that, by any standards, is considered grueling and an experience that I am not sure any of us on this side of the panel would welcome. But I do welcome you. I appreciate you coming by my office for a courtesy visit. You were most responsive and helpful, and I most of all appreciate your willingness to take an enormous pay cut to go through an experience that, by any description, is not the easiest that anyone experiences in life, for the privilege of serving our country.

The reality is you have been willing to give up an enormously responsible position and substantial income for an endeavor that I think can well be of great service to our country.

I also particularly appreciate that you have experience in management. I think many tend to forget, in looking at these issues, that you head the largest law firm in the world or the history of the world, and you bring to it, I believe, greater experience in management than any Attorney General I know.

All of these are pluses. I say that, because I think you also appreciate that many of the questions you have received today have been tough questions, probing questions, and that is a sign that there are questions to be answered. It is also a sign that the other areas, your credentials speak for themselves, so I don't want you to feel like the fact that we don't dwell on questions that develop your background, your superb legal experience or management experience doesn't mean that we don't understand and appreciate those qualities.

Ms. BAIRD. Thank you.

Senator BROWN. I do have some questions that I think are raised by what has come up, and I thought I would try and go through them. I hope you will not feel constrained by my questions. I hope if you have additional comments or views in that area, you will volunteer them.

I noted, in reviewing the information that we got for this hearing, that the penalties that have been assessed and that you have paid related to undocumented aliens have been handled as a civil matter, not a criminal matter. In my inquiry as to what the difference was, I was advised that criminal matters only come to that level if it is felt that there is a pattern or a practice that raises it to a criminal status. Put in other words, if it is an isolated incident, the normal practice is not to consider it criminal, at least with regard to undocumented aliens, versus the circumstances where it is a pattern or practice.

Thus, I think the obvious question suggests itself: Have you ever employed someone, either before or after the Peruvian couple, in which you did not complete an I-9 form?

Ms. BAIRD. No, and I assure you I won't again.

Senator BROWN. Asking you to recall your context several years ago—and this may be difficult, and I hope if you don't recall, simply say so—but thinking about your experiences with that employment agency, did they give you any information indicating you should file Federal forms or complete Federal forms or complete an I-9 form, when you went through them to hire someone?

Ms. BAIRD. My husband dealt with the agency and I don't know the answer to that, but I can get you the answer.

Senator BROWN. Thank you. I guess the same question would be if they advised you to examine documents, passports, social security cards, driver license and so on. Do you recall who paid the agency's fees? My understanding is the fee is reasonably significant in this regard. Was it you or was it the employee?

Ms. BAIRD. I assume my husband paid the agency fee for us.

Senator BROWN. If you find that is different or learn it, I would appreciate you letting us know.

Ms. BAIRD. I am sure that he must have paid the fee, but I will confirm that for you.

Senator BROWN. I mention it, in that we have inquired about the compensation of the individuals. It seems to me that——

Ms. BAIRD. Oh, they would not have paid the fee. I'm sorry.

Senator BROWN. Well, it seems to me your willingness to pay that fee or your having paid that fee could be a significant factor in evaluating the compensation they received.

Did you or your husband ever discuss with the couple social security taxes, income taxes or other deductions?

Ms. BAIRD. I believe my husband discussed these issues with them.

Senator BROWN. But you did not?

Ms. BAIRD. No.

Senator BROWN. Did your husband ever tell the driver that he would "take care of these deductible items" or these deduction items?

Ms. BAIRD. The Social Security and unemployment, I am just—you know, I am really straying into something I don't know first-hand. I would assume he would have told him that my husband would pay the Social Security and unemployment, because that was our intention. I don't think he would have told him that we were going to pay their income tax obligation when that became due.

Senator BROWN. Did you ever advise them about their responsibility to pay Social Security taxes and income taxes?

Ms. BAIRD. I don't know. Our intention had always been to pay the entire Social Security tax, both theirs and ours, which is something some people do and some people don't, as I understand it. But I don't know what conversations there were about their income tax.

Senator BROWN. You personally never advised them of their responsibility to pay income tax?

Ms. BAIRD. No.

Senator BROWN. Were you aware that the couple did not pay Federal income tax in 1990 and 1991?

Ms. BAIRD. I can't tell you that I thought about that, although, on reflection, I would have assumed that, without the Social Security number, they probably didn't.

Senator BROWN. But you don't ever recall being made aware of or knowing that they hadn't paid taxes?

Ms. BAIRD. No.

Senator BROWN. Thinking about the timing here, it wasn't clear to me if you had consulted an attorney about the responsibilities

here before you had hired them or after you had hired them. Do you recall?

Ms. BAIRD. My husband consulted attorneys both before and after we hired them. His recollection is that he talked to Richard Williams before, and I believed he had talked to Mr. Belote, although I can't tell you today and I can get you the answer to that, as to what his recollection is.

Senator BROWN. There is, of course, made available to the committee a copy of a letter from your attorney this year, dated this year, where he reiterates advice to you. Is that advice substantially similar to what he had indicated in 1990, or is it different in significant ways from what he had said then?

Ms. BAIRD. It is substantially similar to what I understood he had said in 1990, yes.

Senator BROWN. Do you recall if he put anything in writing in 1990 or 1991? Is this the first time it has been reduced to writing or documentation?

Ms. BAIRD. I never saw anything in writing earlier and I don't believe there was anything, but I don't know the answer to whether he did.

Senator BROWN. I wanted to go through something I think is significant, to make the record clear. I know it has not been pleasant for you, but you have been very frank about talking about the problems associated with hiring the undocumented aliens. As I understand it, you consulted with an attorney or advised that it was illegal, but that it may be considered a technical violation and proceeded to go ahead and hire them. I don't mean to put words in your mouth, but I think that is a fair description of the process.

Ms. BAIRD. What I understood, just to correct you modestly, I think, although it is difficult listening to make sure that I catch anything that needs a slight adjustment, but I understood the attorney letter said that it was a violation, that civil sanctions are technically available, but not enforced, as he understood it.

Senator BROWN. Would it be fair to say that you knew it was illegal to hire them, but the sanctions were not enforced?

Ms. BAIRD. Yes.

Senator BROWN. I wanted to identify the specific areas, specific potential violations that you were aware of were illegal, but went ahead with, and I think it is appropriate—I guess the reason I ask it is to identify which violations you feel were committed or not committed, and identify which violations you were aware were illegal at the time and did, and which violations you may have simply violated without being aware.

To that purpose, I thought I would simply go through the list of seven that occur to me. There may well be others. A couple that appear to be in the first category were, one, the hiring of the unauthorized aliens and failure to complete and file the employment verification forms, the I-9. Are those in areas that you were aware were a violation of the law at that time?

Ms. BAIRD. Well, let me say this: I was aware of the first with respect to the forms. And I don't say this again to excuse or distance myself from this, but I am just trying to be accurate. I trusted this process to my husband and I did not monitor it and I wasn't close enough to it to know which forms could be filed and which

couldn't. Now, I don't say that in any way to excuse it. I should have been close enough. My assumption is that there were forms that should have been filed for a legal worker that could not be filed for someone who didn't have their papers.

Senator BROWN. What about the failure to withhold Social Security tax?

Ms. BAIRD. I was aware that we were not paying the Social Security tax and, as I explained, that we intended to pay that when they got Social Security numbers.

Senator BROWN. What about the failure to pay the unemployment excise tax?

Ms. BAIRD. That I, too, assumed we were not paying until they got Social Security numbers.

Senator BROWN. So you were not aware that you were required to pay it?

Ms. BAIRD. No, I was aware.

Senator BROWN. You were aware.

Ms. BAIRD. I was aware that there was a requirement to pay unemployment tax and that was a tax we intended to pay when they got Social Security numbers. My understanding was that was one of the taxes, along with the Social Security tax, that we were not able to pay until they had Social Security numbers.

Would that be the same? Would the Social Security excise tax, the portion that applies to the employer—we talked earlier about withholding for Social Security.

Ms. BAIRD. Well, I'm sorry. I was considering as one the withholding and the excise. I haven't—

Senator BROWN. That is a natural—what about the failure to furnish the employer a W-2 form for 1990 and 1991?

Ms. BAIRD. Again, I didn't monitor that and I didn't, you know, I can only say I didn't pay attention to that.

Senator BROWN. But that was not something you were aware that you were required to do and it was something simply that you hadn't handled?

Ms. BAIRD. If I had thought about it, I would have recognized there was a requirement to do it because I had done it before with a prior worker when I was handling this who was a U.S. citizen. I don't know, but will find out for you, whether this was something that was done. I don't know the answer to that.

Senator BROWN. Well, now, that raises a different—my understanding was that the W-2 had not been made up for 1990 and 1991. Is that correct?

Ms. BAIRD. Well, let me just say this. First of all, I said I thought it was required. I'm really not sure whether it was required and I will have to just confirm your understanding that it wasn't provided.

Senator BROWN. I want to take you to a little different area, and this is a difficult area; at least in my view, it is difficult and I hope you will feel free to not limit yourself to the confines of my question, but to give us more than that, your feeling.

It is my understanding that the Department of Justice currently, in the course of interviewing employees, has them fill out a form. The form involves a waiver with regard to access to their Federal tax returns. It is, I assume, a personnel matter of checking on peo-

ple, whether they have filed income taxes or not, whether or not there have been delinquencies, and so on.

Included with that, the Justice Department, as I understand, inquires whether or not you have failed to file any Federal income tax forms or returns. It goes through a variety of things, including penalties, both civil and criminal, and a variety of other things. The policy apparently is—and I say apparently because we haven't gotten a copy of a formal policy on it—but apparently the practice, at least in some parts of the Justice Department, is to not hire people who are unable to say that they have never failed to file a form, and so on.

A recent article in the Washington Post quotes a Washington tax attorney as saying that questions regarding compliance with tax laws are routinely asked for job applicants for the IRS and the Tax Division of the Justice Department, and that failure to file appropriate taxes is considered disqualifying.

The question that I would address is, is this a policy that you approve of; that is, disqualifying people in this area? Is it one that you have a view as to whether or not it should be continued?

Ms. BAIRD. Senator, I don't know exactly what the question is. We have paid all the taxes we owe now, and the IRS has looked at that. I understand that they are satisfied. Our returns have been examined as part of this process and I understand that they are satisfied. I'm not familiar with that particular policy and whether it's a disclosure policy and whether there is evaluation of the reasons or the significance or order of magnitude of the failure relative to the other qualifications or whether it's an absolute policy. I would have to look at that before making a policy judgment for the Department. I'm just not familiar with—

Senator BROWN. Let me just say that at least my own view would be I would think it would be unfortunate and a mistake to exclude employees who have failed to file a form they don't know they have to file or where there are extenuating circumstances. My hope is that it wouldn't be an automatic exclusion from hiring, but I guess my question is whether you feel it ought to be a matter of excluding, weeding potential employees out or not.

Ms. BAIRD. While there may be some actions some by individuals which should be automatic disqualifiers for service in the Justice Department, I would think that in most circumstances, including this one, it would be much more appropriate to have disclosure and to evaluate the information and make a judgment rather than have a rule which is an absolute determination without any facts, circumstances, human situations factored into it.

Senator BROWN. Thank you. I see my time is expired. I yield back.

The CHAIRMAN. Thank you, Senator. Ms. Baird, Senator DeConcini, who was here at the outset and had to go off to the Interior Committee and listen to a number of his colleagues with regard to that nominee, would like to ask his round of questions now. I had indicated we would try to stop around 4. Obviously, that is going to take us until about 25 minutes of 5.

Now, what I would suggest after that is we will adjourn until 10 on Thursday morning, and then the caucuses I referred to—we will break around noon and come back at 2. Now, there are other Sen-

ators who have been sitting here a long time. If any of them would like to make a statement rather than go through their questioning—

Senator Braun.

Senator MOSELEY-BRAUN. Mr. Chairman, I have a question regarding procedure.

The CHAIRMAN. I beg your pardon?

Senator MOSELEY-BRAUN. A procedural question.

The CHAIRMAN. Surely.

Senator MOSELEY-BRAUN. With regard to your plans for scheduling, are we going to hear from Professor Gewirtz?

The CHAIRMAN. Well, the request has been made, not formally, but suggested by Senator Specter. I think that is a matter the Chair will take under consideration as to whether or not we will ask the professor to come and testify. My inclination is yes, but we will make that judgment between now and Thursday; but, as I understand, there have been at least three of my colleagues who suggested that, because the information that has been proffered by Ms. Baird is understandably secondhand, and necessarily so, we should, as they say, go to the source, and I assume that is what you are suggesting.

Senator MOSELEY-BRAUN. Well, that is correct, Mr. Chairman. I am also concerned—and I think it was Senator Specter who raised the name of the lawyer, Mr. Belote, if that is the correct pronunciation. Will we have a statement from him or something?

The CHAIRMAN. We do have an extensive interview. I am sorry. You mean the lawyer that has been referred to?

Senator MOSELEY-BRAUN. Right.

The CHAIRMAN. Yes; we have an extensive staff interview with him which will be made available to every member of the committee. And, again, we can make the judgment after you have a chance to read that as to whether or not he is someone we would wish to ask to come before the committee.

Senator MOSELEY-BRAUN. And, finally, Mr. Chairman, I am concerned—and I don't want to cause any unnecessary hardship on anyone, but at the same time we have had the discussion about these employees almost in a way that—I mean, their existence doesn't seem to have really come before this committee. We haven't heard anything from or about these people and I don't know if they are around or if they are available to be questioned.

The CHAIRMAN. I can help the Senator on that score. Our staff has extensively interviewed the male employee and has, with due diligence, tried to locate the female employee who left the employ of the Bairds, went to another employer. I understand that employment relationship was terminated and no one knows, that we are aware of, the whereabouts. We are pursuing her location, with the help of the FBI, to be able to interview her as well.

Of all the persons mentioned, she is the only person that has not been deposed, has not had either an in-person, in-depth interview by the investigative staff and/or a long telephone interview by the investigative staff.

Ms. BAIRD. I would just add for your information, though—just remind you she was interviewed by the FBI at some length.

The CHAIRMAN. Yes, that is a valid point. She has been interviewed. Both parties were extensively interviewed by the FBI. I know the Senator is aware of that because that is in the FBI report that has been made available to each of the colleagues, but what this committee historically and typically does is we do not merely rely on the FBI investigation.

Ms. BAIRD. No. I just wanted——

The CHAIRMAN. We conduct our own and we have not been able to locate her for the purposes of our staff interviewing her.

Senator MOSELEY-BRAUN. Again, I am concerned, Mr. Chairman, and again, I don't want to cause any hardship on the lady, and I don't have her name in front of me right now, but I am concerned about the whole notion of the Attorney General nominee discussing the terms of employment with this woman who was going to take care of her child and whether or not the whole issue of immigration status was a part of that discussion. I mean, I think that we ought to have some conversation about that.

The CHAIRMAN. I can help on that score as well, and maybe we can spend some time after we adjourn to go into some detail on this and see if there is additional information the Senator would like made available. But the interview by the FBI of the two persons, the two undocumented aliens, is totally consistent with the statements that have been proffered by the Attorney General designee and other witnesses who were interviewed by both the FBI and by our committee.

But there may be additional information the Senator is seeking and we can attempt to——

Senator MOSELEY-BRAUN. Certainly, and please don't for a moment think that I am suggesting that there is a contradiction.

The CHAIRMAN. Oh, no. It is a valid question, Senator.

Senator MOSELEY-BRAUN. It just seemed to me that for purposes of this hearing——

The CHAIRMAN. Now, I know why you graduated from Chicago and were a prosecutor as well, a Federal prosecutor. I understand. We will thoroughly pursue this, and if there is anything the Senator or any member of this committee wishes to have additional information on, I can assure you this hearing will not be closed until you and everyone else on this committee is satisfied they have had an answer to their questions or that there is no answer available that would satisfy them, and they can make their own judgment at that point.

Senator MOSELEY-BRAUN. Thank you.

The CHAIRMAN. Now, as usual, Senator DeConcini is the consummate gentleman and he has suggested that, notwithstanding the fact he was the first one back here, he is willing to withhold his questioning until questioning begins on Thursday morning at 10. And so with your permission, Ms. Baird, I am sure this will bother you, but I would like to adjourn now until Thursday morning at 10.

The hearing is recessed until then.

[Whereupon, at 4:27 p.m., the committee was adjourned.]

NOMINATION OF ZOË E. BAIRD

THURSDAY, JANUARY 21, 1993

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:17 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee), presiding.

Also present: Senators Kennedy, Metzenbaum, DeConcini, Leahy, Heflin, Simon, Kohl, Feinstein, Moseley-Braun, Hatch, Thurmond, Simpson, Grassley, Specter, Brown, Cohen, and Pressler.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. Would everyone except George Tames clear the well? George, you can stay there. Happy birthday. George is 75 years old today. [Applause.]

He is the only one that can come close to reveling Senator Thurmond. For 54 years, he has been taking photographs here and has been the most courteous guy for the 20 that I have been here. But get the hell out of the well, George. It is too late now. [Laughter.]

Congratulations, George. Happy—

Mr. TAMES. Nothing changes.

The CHAIRMAN [continuing]. Fifty-four years. Strom, he has been here almost as long as you have, 54 years taking pictures for the Times.

Ladies and gentlemen, welcome back, Ms. Baird. We are going to proceed in the regular order, as they say in Senate parlance. The next to ask questions—we will stick with the 15-minute rule—is the distinguished Senator from Arizona, and then the Senator from Maine, I believe, Senator Cohen. And we will complete a first round.

We are going to recess at 12 o'clock because both parties have caucuses, and we will reconvene at 2 o'clock. If we can have order in the room, and Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

Ms. Baird, let me get right to it due to the time constraints here. The other day you indicated that you supported the reenactment of the independent counsel. I think Senator Grassley asked you that question. Am I accurate?

TESTIMONY OF ZOË E. BAIRD, OF CONNECTICUT, TO BE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Ms. BAIRD. Yes, that is.

Senator DECONCINI. I was out of the room, and I just wanted to be sure. I think we know that Attorney General Barr has twice rejected it. I believe also that Senator Simon asked the question about your looking carefully at the Inslaw case. I think Senator Hatch also suggested that would be a good idea.

Ms. BAIRD. Right.

Senator DECONCINI. What is your feeling about using the independent counsel, and do you intend to reconsider the Attorney General's refusal to appoint an independent counsel, assuming it was reauthorized?

Ms. BAIRD. Senator DeConcini, I am a very strong advocate of the independent counsel statute. I believe it is critical to a general feeling in the country that senior administration officials will not be treated differently under the laws than the rest of the people in the country.

There is a very legitimate public concern—it may just be an appearance concern, not an accurate reflection—of whether the executive branch can investigate itself; but whether it is appearance or whether, in fact, there is reality to the difficulty of an administration examining itself, it is to my mind critical that the public have the confidence that an independent individual who is not an appointee of the President will investigate the other senior appointees of the President.

Senator DECONCINI. Thank you. What about the Inslaw case?

Ms. BAIRD. On the Inslaw case, I want to look at that very carefully. As I said to both Senators Simon and Hatch, I need to personally review the background on that case, and I think it probably would not be appropriate for me to comment on whether or not I would appoint an independent counsel in that case. But I want you to know that I have found a bit puzzling the idea of finding mechanisms other than the independent counsel on some of these things when the independent counsel statute is on the books.

Now, I don't say that to say that I know something was wrong. I don't want to overstate that because I haven't looked at the facts.

Senator DECONCINI. Fair.

Ms. BAIRD. But I do want to look very hard at the process that we use in these situations.

For example, there is a preliminary investigation requirement in the independent counsel statute. You look first to see if you need to go for an independent counsel. It may be that there is a role there for an outsider that, in fact, enhances the public confidence in the integrity rather than diminishes from it.

Senator DECONCINI. Well, are you saying that you might suggest some changes in the statute as well?

Ms. BAIRD. Well, I think we should all talk about whether there are some constructive changes in the statute that should be made.

Senator DECONCINI. Do you think we should go ahead and reauthorize it as soon as possible, seeing that it has lapsed, and then consider changes that you might want to take several months to look at?

Ms. BAIRD. I would want to talk to you more about that. That may be the right way to do it, some temporary reauthorization while we look at it.

Senator DECONCINI. Ms. Baird, I don't want to put words in your mouth or in your statement. But is it fair to say that as Attorney General, if the independent counsel was reauthorized, either as is or as you might suggest we alter it, you will personally review the Inslaw case and circumstances and make a judgment based on your independent evaluation of whether or not an independent counsel would best serve the public interest?

Ms. BAIRD. Yes.

Senator DECONCINI. Thank you.

Now, Ms. Baird, I talked to you in our office, and I thank you for the time that we discussed the problem of law enforcement and its defined role in the drug interdiction. Over the last decade, I have asked every Attorney General, as I told you that I had, about why the INS and the Border Patrol are not given the emphasis that many of us feel they ought to, from enforcement, which we have discussed to the failure of funding properly the law enforcement arm of the Border Patrol.

For instance, since 1988, a GAO March 1991 report showed that the number of Border Patrol staff has declined by 9 percent. Further, the proportion of total Border Patrol agents' time devoted to border control activities decreased from 71 percent to 60 percent in 1990.

The GAO report goes on and shows that they don't get the money for the vehicles, that even when Congress designates money for the Border Patrol, the INS moves it around and uses it, believe it or not, for employer sanctions enforcement under the 1986 immigration law.

Every Attorney General has sat here, as you do today, telling me and this committee that they are going to change that, both that the INS is going to be a high priority and not a political camping ground, if they have anything to do with it, and that the Border Patrol is going to get the emphasis that deserves on enforcement. It has the highest attrition rate of any Federal law enforcement, almost 30 percent.

Now, can you tell me what you are going to do regarding INS, and the Border Patrol in particular?

Ms. BAIRD. Senator, one of the things that I would hope to bring to the Department of Justice is a very organized, aggressive approach to the management of that Department. I said on Tuesday that it is most remarkable to me in looking at developments, institutional developments not case developments in the Department, to see that the budget has been increased hugely by Congress trying to do right in these areas, dealing with drugs and dealing with crime. It has increased hugely, but there hasn't been someone at the helm who has the management experience to make sure that the reemphasis within the Department, the restructuring, the management direction exists to have these moneys spent as effectively as one would spend them in the private sector.

Senator DECONCINI. Well, will you advocate that as well—

Ms. BAIRD. Absolutely.

Senator DECONCINI [continuing]. In your budget proposals to OMB and be prepared to go to the White House if you get cut out from what you think is necessary for a more effective INS, and particularly Border Patrol?

Ms. BAIRD. Yes.

Senator DECONCINI. Thank you.

Now, also I want to ask you an easy giveaway question. After you are confirmed, in the first year or 18 months or so, would you take a trip to the border of Mexico firsthand to see the problems there? I think one of the problems is—and Attorney General Barr started to do that and did make one trip to California and then canceled some other trips out there. But he did make one trip to California, and I talked to him afterward. And I thought he was going to move in the right direction. He certainly had some good intentions, but it never seemed to come to pass.

Would you go out there and really spend a day or two on the border and see—

Ms. BAIRD. I think it is an excellent idea.

Senator DECONCINI [continuing]. How your employees are not getting well served by their superiors, and particularly the funding?

Ms. BAIRD. I think it is an excellent idea, and I would say that I think the best managers I have seen in the business environment are people who go out and sit around the table with people in the field, and I intend to do that. I intend to go to the prisons. I want to get out there and get a feeling from the people who are doing the business of government for this country what the problems are, what is inhibiting them from the top, get their ideas.

Some of the best managers get the best ideas for how to run institutions from the people who are out there day in and day out grappling with those problems.

Senator DECONCINI. I am glad to hear that.

Now, you were also asked some questions about the so-called glass ceiling. GAO in a recent report found that very few women break that glass ceiling in the Justice Department. According to GAO, as of September 1991, of the 342 senior executives at the Justice Department, none were women.

As a top manager of the Justice Department, approximately 23,000 Federal law enforcement personnel are there and, as we have said, there are 90,000 total employees. How do you intend to ensure that women are going to receive the adequate ability to move up? And I am sure you are sensitive to this, having done so in your employment, according to the background reports and I have looked at.

What would you do here?

Ms. BAIRD. I think the key to the advancement of women is leadership from the top. I think that is a key in a business environment, and it is a key in government.

The reason is that it makes it clear to the people throughout an organization that it is not acceptable to make excuses for why women aren't in the pipeline or why a woman can't do a job. The reality is that judgments about people tend to be very subjective, very often, and if we can confront that and talk openly about that and try to set rhetorical standards, because language is a lot of what is important here, I think that can make a tremendous difference.

In addition, I think I have, in every organization where I have worked, helped younger women or women lower in the organiza-

tion, older, younger, professional, nonprofessional, feel stronger about their place, feel able to be more assertive, feel supported and promoted. And I, of course, don't want to end the answer to that question without saying that I have a personal commitment to have very diverse senior management. Where I can affect the people put into the top jobs in the Justice Department, I want that to include a very good share of women, and not only women but also minorities.

Senator DECONCINI. Well, I believe you are going to be in a very key position to do that, which would, in my judgment, set a pattern for the whole administration and other Cabinet positions as well.

Ms. BAIRD. Right.

Senator DECONCINI. I hope you follow through. Obviously there is no shortage of competent, capable women lawyers that you know and I know. Fifty percent of them from the law schools now, approximately, are women, and I have a daughter who is one. You know, they just don't get the breaks. The old boys club does work that way, and I know it. Having been a prosecutor, and hiring the first woman prosecutor in my county, the prosecutor didn't want her. They said, "She can't take the tough talk. She can't take the tough cases." She turned out to be one of the best prosecutors we ever had, and we went ahead and hired six more.

Let me turn to another subject matter, and that is the national drug control policy. As you know, former Attorney General Barr stated just recently that it ought to be abandoned. The Department has, as Senator Simon pointed out, 42 percent political appointees. It is a disaster. I supported that. Senator Biden and I and others worked on that, and finally ended up with a compromise. It does have some authority.

I would like to know, do you believe there is a need for Office of National Drug Control Policy? If so, should it be expanded to give more authority to actually direct some of that strategy that they are tasked by the legislation to draw up and publish?

Ms. BAIRD. That is an area that I would like to talk to you more about. I think that we should strengthen the coordination in the drug area, and that coordination may take more direction than simply development of information. But I also am not one who thinks that people necessarily need line authority in order to influence or to have tremendous weight in an issue. So I would want to look carefully at that with you. I don't express any reluctance to suggest that there should be stronger authority. I would just like to talk more about it.

Senator DECONCINI. Ms. Baird, my problem is that there are, I think, 11 or 12 Federal law enforcement agencies, maybe more—I used to know the number exactly—that have some authority on drug enforcement, and we have no leader.

Now, granted, the Attorney General, the Justice Department, has to file the cases, or they are never going to be prosecuted. but we literally don't have any one leadership.

Ms. BAIRD. Well, let me comment on that. I—

Senator DECONCINI. And somebody has to take control of this—excuse me, and I do want your comments. Somebody has to take control of this, and President Bush indicated he was going to do that. And when I talked to him about that office, I told him that

he was going to be the drug czar, because that drug czar was going to have to confront the Attorney General when there was a big disagreement on which direction to go, and go to the White House and get the backing. And we know what happened.

So my concern is what your feelings are about a coordinator.

Ms. BAIRD. Right.

Senator DECONCINI. Maybe it should be the Attorney General. I wouldn't rule that out if the Attorney General had the capability of taking that task on. But then the Attorney General must have the authority, in my judgment, to reach out to other law enforcement. Somebody has got to take over this thing, or we have got to decide we are going to legalize it and throw in the towel and forget it all.

Ms. BAIRD. Critically, the drug problem has got to be one of our highest priority problems, and it has got to be a place where we put both power as well as influence. The commitment I can make to you on this is I do believe that the drug czar should be a Cabinet-level person, and I am prepared to urge now President Clinton to pursue that, which he has suggested he is interested in doing.

Senator DECONCINI. Now, would you do that with expanded authority, or you don't know yet?

Ms. BAIRD. To the extent the authority needs to be expanded, I need to study it more. I don't know. I think there is, though, a very strong statement that that person is Cabinet level, is of equal rank with the others who are running these programs.

Senator DECONCINI. Ms. Baird, what will you do to confront the constant problem that is so widespread in law enforcement, generally known as turf battles? Your predecessor pledged to attempt to reduce turf conflicts, particularly those between Treasury and Justice law enforcement agencies. And, frankly, he did, when he was personally involved in it, and the best example is the creation of the forfeiture fund within Treasury. That only happened because Attorney General Barr stuck by his word, and Senator Biden and Senator Bentsen and a number of other people agreed to put it on an Appropriation Committee bill. But he said here that he thought there was justification in it and he would support it, and yet when we tried to enact it, it was the Justice Department that kept throwing stones in the way. It was only when I talked to him himself that it finally happened.

You know, that is just one indication, the prosecution, cross-deputization particularly on the Customs and the border enforcement agencies. Have you thought about what you are going to do about it to minimize those and to bring those agencies together so they can work together? Have you got any plan?

Ms. BAIRD. I have thought about this a good deal, and I can assure you that I will not tolerate turf as a rationale for decisions. I strongly believe in cooperative management. I am known in my career as a conciliator, as someone who brings people together. I do that around developing a consensus on the mission: What is it that we are about? What are we trying to achieve? And then how do we use our resources to get there? And once you have identified what it is about and everyone is together on that, it is a lot harder for people to claim turf, because turf tends to be claimed because people say they have different missions.

Senator DECONCINI. That is true, but part of it—and I know my time is up. Part of it is the fact that it doesn't filter down, is my observation. You can have——

Ms. BAIRD. Well, that goes back to my meeting with lower-level folks. I think that is right.

Senator DECONCINI. Right. You can have the Commissioner of Customs and your criminal deputy in support of it, and then, you know DEA and FBI can't work.

Ms. BAIRD. Right.

Senator DECONCINI. And to Mr. Sessions' credit, when he read from a hearing that one of the Treasury agencies was having a problem getting money-laundering intelligence information from the FBI, he didn't know that. He called me right away, and it was fixed because it was brought to his attention through a committee oversight. Any, you know, he thought it was happening, and I am sure he thought it was happening, but it wasn't.

You know, something has got to be done if we are ever going to get any kind of cohesive effort. Now, the FBI is a wonderful agency, and I think Judge Sessions has done a very good job in that agency. The DEA and Judge Bonner has done a tremendous job in leading that agency, quite frankly, trying to do their mission with organized crime and drugs. But there are those problems, and it is not because they don't want to do it. They all say under oath, "I will do it."

Thank you, Ms. Baird. Thank you, Mr. Chairman.

The Senator from Maine.

Senator COHEN. Thank you very much, Mr. Chairman. I don't see the chairman of the committee here. I was going to tell him I agreed to join this committee only if there would be some respite from controversy.

As you know, Ms. Baird——

Senator DECONCINI. Lots of luck.

Senator COHEN [continuing]. This committee has been steeped in controversy. I recall when Judge Bork first appeared before the committee, many believed that he had written too much. When David Souter appeared, many believed he had written too little; and when Clarence Thomas appeared, many felt that he had done too much and said too little.

We don't hold you to the same standard as a Supreme Court nominee. You serve at the pleasure of the President. But as the members of this committee have pointed out, you also serve with equal commitment to the people of this country.

While you serve at the pleasure of the President, nonetheless you do hold the keys to perhaps one of the most important secular institutions in this country, and that is the keys to the temple of Justice. We may expect more of you and, indeed, demand more of you than other Cabinet positions.

The issue of your hiring illegal immigrants has been explored at some length, and I will refer to it briefly in a moment.

During some of the other confirmation hearings, Mr. Chairman, I referred to the confirmation process as being the equivalent of summer lightning where the nominee displays brief flashes of illumination but releases no thunder.

You have managed to reverse the process Ms. Baird. We have had some thunder released in the first day, and now we need to explore some of your positions.

There were three Cabinet confirmations yesterday of nominees who had long records of public service, and their positions were relatively well known. But not a great deal is known about your philosophy or views or how your past experience might influence those positions if you become Attorney General.

I want to explore a question that was raised by Senator Specter yesterday about the lawsuit in New Haven.

Ms. BAIRD. Yes.

Senator COHEN. Now, the neighborhood in which you live, is that a small neighborhood or a large neighborhood?

Ms. BAIRD. Gee, I am not sure how many houses there are in the neighborhood. I can take a rough guess, but—

Senator COHEN. Is it fairly close-knit?

Ms. BAIRD. It is a difficult question to answer. It is not a small neighborhood in the sense of 50 houses. It is a lot larger than that. People get together occasionally. It is not a neighborhood where people are talking every day or whatever. It is a typical urban neighborhood.

Senator COHEN. Is there a mixture of rich and poor?

Ms. BAIRD. There is definitely a mixture of income levels. There are some rental houses in the neighborhood, some houses divided for rent; there are some institutional housing in the neighborhood. I think I mentioned the home for special-needs children that is in the neighborhood. There is some mix. It is not a mix of extremes, probably.

Senator COHEN. Would it be fair to say that your neighborhood is a community of shared values?

Ms. BAIRD. Oh, I think that is a difficult question to answer. I mean, there are Republicans, there are Democrats. There are people committed to the city, people who pass through.

Senator COHEN. I don't mean on political lines. I am referring to values that hold the neighborhood together—shared values about the way in which the neighborhood is developing.

Ms. BAIRD. I think that probably overstates the dialog among neighbors in an urban community. I made the comment on Tuesday that my assumption would be that a lot of people in that neighborhood don't have to live in the city, but chose to live in an urban environment because of their commitment to New Haven.

Senator COHEN. I understand that. What I am trying to at least explore with you is the neighborhood association. You indicated you may contribute to it from time to time. Is that right?

Ms. BAIRD. That is right, if there is a call for \$25 or something to go into the dues fund.

Senator COHEN. So I assume it has some kind of an officer or treasurer?

Ms. BAIRD. Well, it does. Its principal function, as in most urban neighborhoods, I think, is security. There is a community policing effort in New Haven that is very strong, and, in fact, in New Haven we are even fortunate enough to still have mounted police who ride down the street on horseback in the middle of, you know, the city. And its principal—I think the dues go to things like a se-

curity patrol. A lot of neighborhoods in the Northeast have their own supplement to the security in the area.

Senator COHEN. But the association is something you wanted to contribute to while living there?

Ms. BAIRD. Yes, and to the community, right.

Senator COHEN. Now, you indicated yesterday you first learned about the lawsuit that was brought by the association against the individual who had adopted or had foster children in her care by reading about it in the newspaper?

Ms. BAIRD. That is right.

Senator COHEN. At the time you first read about it, what did you do?

Did you call your local Congresswoman? Did you call the association? Did you indicate to anyone you opposed what the association was doing in trying to discourage or prevent this lady from locating in the neighborhood?

Ms. BAIRD. Well, this was all very recent, first of all. I don't know if you know the date of the newspaper stories, but it was all very recent. I recall that the story said that what the neighborhood association had done was go to court to have a zoning ordinance clarified. It didn't say a lot of detail, as I recall this, about what the controversy was over or why the suit was brought. I really learned more of the details of what the woman who wanted to live in the community was trying to do in her home recently than I knew then.

So it didn't appear to me from the story to be something of particular note. I will tell you that I have a very strong personal concern about whether there are things that we can do in the Justice Department to deal with juvenile problems, including the foster home situation, because I think——

Senator COHEN. No, I really want——

Ms. BAIRD. I have also read stories about the District of Columbia and the problems with foster care which sound terrible.

Senator COHEN. It may not be fashionable to quote Woody Allen these days, but he once said, "I don't mind dying, I just don't want to be there when it happens."

The same sort of notion exists with people who profess to have commitments to the ideals of this country about equal employment and equal housing opportunities, except in their neighborhood. For example, when someone who offends the values, the biases, or the prejudices of a neighborhood tries to move in, suddenly some kind of legal redress is sought to prevent that. I am trying to explore what your feelings were about the neighborhood association using zoning laws to keep out someone considered undesirable for the neighborhood.

Ms. BAIRD. I think that if, as you summarize it, a neighborhood association, including my own, was trying to keep out people they considered to be undesirable, that it would be a terrible thing and I would not only have no part of it, but would oppose it.

Senator COHEN. Did you make——

Ms. BAIRD. I don't know whether or not that is the case here, and I certainly didn't know that at the time of the story, and I assure you that it is something I would have no part of. I was talking a bit on Tuesday about the efforts I was involved with in the Science

Park area, which is the most depressed area of New Haven. That area is two to three blocks from my home, so I have not chosen to live apart from people who are disadvantaged in this country.

Senator COHEN. I understand you did not make any specific inquiry as to what the association's motivation was. But had you done so, would you have strongly protested?

Ms. BAIRD. Well, I don't know enough of the facts, Senator—

Senator COHEN. I know.

Ms. BAIRD [continuing]. To want to characterize them. I don't want to impugn people superficially—

Senator COHEN. I understand.

Ms. BAIRD [continuing]. But I can tell you that if the facts were that people were trying to keep people they considered undesirable out of the neighborhood, I would have strongly opposed it.

Senator COHEN. I don't know that that was the purpose or the intent of the association. I was just inquiring as to whether you felt you should inquire about this because you would want to express your opposition to it. It is your neighborhood, it is an association to which you contribute or have contributed in the past.

Ms. BAIRD. From what I understood in the story, it didn't strike me as something in which I should intervene.

Senator COHEN. Now, when you applied for a green card for the woman you hired, you had to certify that there were no American citizens available for the job, is that correct?

Ms. BAIRD. The Labor Department has as process that one uses to show that there aren't Americans willing, appropriate Americans willing to—

Senator COHEN. Right, and you have to certify to the Labor Department that there are no Americans available to perform this work. That is what the law requires, right?

Ms. BAIRD. Well, since my husband did this, I am sorry, I am not trying to distance myself, but I just want to be careful about my answer. You have to demonstrate that. I don't know whether you certify it. I am not trying to be technical. I just want to make sure I am accurate.

Senator COHEN. I understand. But you have to at least make a statement, whether it is in a certification or by filling out an application, that you have made a good-faith effort to determine whether or not there are American citizens available for that job?

Ms. BAIRD. It is actually not that general. In fact, the Labor Department has a very specific process which is run through the State's unemployment job service and it requires advertising in a form that the Labor Department considers appropriate and it requires posting within the job service, and the process that we used was that and it is the job service which is part of the process of demonstrating to the Labor Department that no U.S. citizens were available or interested in the job.

Senator COHEN. I understand you did that.

Ms. BAIRD. OK.

Senator COHEN. It is my understanding that New Haven, like the rest of Connecticut, was in a fairly deep recession at that time and many people might find it hard to understand why there weren't American citizens available for the job or whether they weren't available at a certain price, or if you had advertised the job

at a higher price, there might not have been Americans available to do the work.

I ask this in light of the fact that you previously had a nanny who was an American, and then subsequent to the individual in question leaving your employ, you had an American citizen fulfilling that position. How is that possible.

Ms. BAIRD. I asked myself that many times. I don't think it was the price, because we were prepared to pay more. It was a live-in position and it requires some interest in, experience in child care, some commitment for longer than a short period of time to provide the stable child care.

I don't know, when we had this on file with the job service and ran the advertisements, there were only two people who even included this as one of the jobs that they might look at, unemployed people. I don't understand why there wasn't a stronger response, but this has been my experience, I will tell you. This is my experience in trying to find child care. I can't tell you beyond that why it is that more people aren't interested in that work.

Senator COHEN. Did you have to pay more for the two American nannies, or was the same amount of money involved?

Ms. BAIRD. We paid \$260 a week to the American woman we hired before, and we are paying \$250 a week now.

Senator COHEN. Yesterday, you indicated that one of the things you want to do is restore trust in the Justice Department—

Ms. BAIRD. Which I might answer, Senator—I am sorry to interrupt you, but I just want you to understand that that is really the prevailing wage in our area for this kind of work, and that, of course, on top of that, the person gets all their room and board and other benefits.

Senator COHEN. You indicated yesterday you want to restore trust in the Justice Department, and one of the things you recommended is making a log of all phone calls that you and your top personnel receive, including those from the President, is that right?

Ms. BAIRD. Yes—well, I didn't say necessarily top personnel, but it is not a bad idea.

Senator COHEN. I assume that would include calls from Members of Congress, as well?

Ms. BAIRD. I would think so, yes.

Senator COHEN. Would you document just the fact that a call was made or would you also document the substance of the calls? [Laughter.]

It is a serious question. I want to know if you are going to put down the substance of the phone conversation and make that available, as well.

Ms. BAIRD. I would like to think hard about how to do that. If it were possible to give some sense of substance, without interfering with—first of all, without making you reluctant to call me—

Senator COHEN. That's the question I have.

Ms. BAIRD. The virtue of putting the list out there and putting it down where the reporters are in the Justice Department is that they won't inhibited, I am sure, to ask what it was about, if an inquiry from a particular member is of interest. But there is also—

Senator COHEN. Let me interrupt you here. If the President calls you, you make a note: February 22, 1993, President Clinton called. Now, what does that tell a reporter or any Member of this body?

Ms. BAIRD. First, it invites them to ask a question, if they want. Second—

Senator COHEN. Would you reveal the substance of a conversation with the President?

Ms. BAIRD. I think it depends—I wouldn't reveal the substance of the conversations, but whether I would reveal the subject matter is a different question. It may be appropriate to reveal the subject matter, either upfront or in response to a question, and I would have to think about how I might do that in the most constructive and open way.

The real reason that I am interested in this is I think it is as very powerful statement that I want a nonpartisan, highly professional Justice Department, even when dealing with the President and with Members of Congress, because we need to do something that is that dramatic, to put a list of every single phone call I have had out in public view, in order to try to break down some of the public cynicism about how public officials function and particularly about the Justice Department. And if you have ideas for other similar things I could do to break down that cynicism, I would be very welcome to hear them.

Senator COHEN. Let me ask you just one more question about habeas corpus reform. You mentioned yesterday you had read Justice Powell's report. As you know, he chaired the special committee that found that habeas corpus proceedings are used repeatedly and frivolously as a tactic to postpone the death penalty. I take it you read the report?

Ms. BAIRD. I have read about the report. I haven't had time to read the report yet.

Senator COHEN. I take it you also do support the death penalty?

Ms. BAIRD. Yes.

Senator COHEN. You also indicated earlier that we must bring finality to habeas proceedings. One suggestion you made is to provide better counsel for those accused of crimes. I have two questions about this. First, how would you go about providing better counsel for those accused of crimes? And then if you are able to establish such a system, would you then restrict Federal habeas corpus proceedings if there had been a full and fair hearing at the State level? Is that how you would finalize it?

Ms. BAIRD. Well, to respond to the second question first, I think that we need to assure that there is a fair system for criminal defendants, and some habeas right does need to be preserved. The interest in finality cannot be the only interest that we pursue here.

The reason I mention the idea of trying to get better counsel for people is, as I have started to look at this issue—and I appreciate it is just a beginning look, I was designed for this position a month ago—but as I have started to look at this issue, it seemed to me that a good deal of the problems that get played out in the habeas context take place because people didn't have adequate counsel early on, and it is when they are first going through a final trial and a sentencing process that they ought to have a front-line protection for the fairness of the system and protection of their rights.

I would like to look and work with the Senators and Members of the House who are interested in these issues, to see if we can develop a way to get better counsel up front, so that the habeas problem will diminish, but also because it is fairer to criminal defendants to try to get them better counsel or not make them either wait 7 and 8 years to find out whether there is some unfairness in the proceedings against them.

Senator COHEN. Well, we can explore this when we go around again.

Ms. BAIRD. Thank you.

Senator COHEN. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Thank you, Senator.

Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman. Ms. Baird, like others, I believe that a President's nominee for any position is entitled some deference and enjoys the presumption of confidence. But I, like others, am concerned about the fact and the symbolism of your having hired two illegal aliens.

Nevertheless, I also believe that your statement that you should be considered on the basis of your entire record is clearly correct, and I would like to ask you several questions about subjects in that area.

Before I do, I would like to make this comment and ask this question. You have repeatedly suggested in your testimony here that you believe and that you want to see to it that the Attorney General functions at a level of acceptability and morality which is as high or higher than any of your predecessors, because you want to be certain that the public has full confidence and trust in the Attorney General.

How do you square that with the fact that your nomination is troubled by something which is clearly in the area of morality and acceptability?

Ms. BAIRD. Senator, I have said to you and the others here that I have done something that I deeply regret. I have said it is wrong. I have said it is a mistake. I think what it says to me and to others is, in fact, that this is an example of the laws being applied even-handedly, rather than to the contrary.

I have paid the penalty. I made a mistake, but I think that when I did this, I was not appreciating that the law applied to me differently, rather, I was looking at the laws it seemed to me to apply generally. But the most important thing I would say—you know, I have thought a lot about what I would say to the employees of the Justice Department in my first meeting with them, in fact, in my first meeting with the employees of the INS.

I think what I would say to these people is that this is a demonstration that the law does apply to everyone. I was wrong to have broken the law. This should not be done by others. I don't recommend it to others. I don't excuse others. I don't excuse myself.

I think what I would want to convey to people in this is that I have accepted on myself that I should not have done this, even though when I did it, I thought that it wasn't a matter perceived as an enforcement matter by the agencies, it was a matter where there was a process to clarify the situation.

I don't excuse it. I should not have done this, and the law should apply evenhandedly to everyone. I would hope that the Justice Department under my tenure would come to be known as an aggressive institution that applies the law fairly to everyone, as a professional institution, as an institution that people are proud to work in.

You know, what would make me happiest is if the brightest young lawyers of all races and all genders thought that the best place to start their career was the Department of Justice, that the brightest investigators that the police departments wanted their people to come into the Department of Justice and have the exposure to the aggressive, fair, compassionate enforcement of the laws, and I think that this experience only furthers my commitment to that.

Senator KOHL. One other question on that. Clearly, I believe that you want the Attorney General of this country to be respected as much as anybody else in Government, because that person is a citizen's representative with respect to law and order and justice in this country.

Have you asked yourself whether or not you might serve that order best by withdrawing your nomination?

Ms. BAIRD. I don't believe that would be appropriate. I think that my overall record gives me the potential to be a great Attorney General, that this episode, while I don't want to diminish it or excuse it, it was an episode which was a civil violation. When I paid the penalties, the penalties were \$2,900. I am not trying to say that it is small or unimportant. I am just trying to say that I think that the power of my overall record and the potential that I have to serve this country and to serve this President, as Attorney General, should override the particular incident, in my mind, in my judgment.

Senator KOHL. As I understand your position, Ms. Baird, you are supportive of the Brady bill. As you know, it is now part of the crime package which we have not been able to pass through Congress. If we cannot get the crime package passed forthwith, would you be supportive of the Brady bill standing all alone as a free-standing piece of legislation?

Ms. BAIRD. I am very interested in getting the Brady bill through Congress quickly. I think it is probably premature for me to comment on whether I would support it standing alone, but I am very committed to getting it through quickly, and if standing alone is the best way to do that, then that is what we are going to have to look to do.

As I have talked with members of this committee, I think there are many who are as concerned that the Brady bill can't get passed standing alone, as well as those who feel that it shouldn't be held back by getting consensus on an omnibus crime bill, I think we need to talk about that. I would like to talk with you more about it and with other members of the committee, because I think we need to evaluate what is the best way to get that Brady bill passed quickly.

Senator KOHL. In the general area of crime, Ms. Baird, there is this continuing dialog about what kind of an emphasis we should place in government on treatment, on prevention, and on incarcer-

ation. And in that continuum, the Bush administration clearly, in terms of their philosophy and in terms of how they spent money, believed that we should spend very strongly, perhaps more strongly than in the other areas, on incarceration.

Could you give us your philosophy interims of where you will be headed, as Attorney General, with regard to these three areas: prevention, treatment, and incarceration? Where does this country need to go? What should we be emphasizing in our legislation and in our appropriations?

Ms. BAIRD. I think that we need to be strong in all three. Your question fairly says is there an overemphasis in any area here. In the incarceration area, President Clinton has said during the campaign that he believes that even juveniles should know that they are going to be incarcerated, whether it is a boot camp arrangement or something, there ought to be some belief when someone commits a criminal act that they are not going to just get bumped out on probation and their life won't change dramatically.

But that being said, we need to put a very heavy focus on prevention and on treating the things in society that cause people to commit crimes, because it is not adequate to just deal with the after-the-fact punishment, particularly since the problems that occur with incarcerated individuals, in fact, the potential they can become better criminals is not going to solve our problems.

We need to focus very heavily, I think, as we go forward and together talk about where we should be spending our dollars in the criminal justice area and where we should put the emphasis of our programs and where we put our best managers and our best leaders. I think we need to talk a good deal about how to strengthen and build up the preventive aspect of this.

Now, President Clinton has had some prevention aspects in his program, too, the idea of 100,000 more police on the street, for example. I also think that we need to do a lot with juveniles to try to keep people from becoming criminals or viewing their only potential in life as a criminal potential early in their lives. It is not unlike trying to get an education in the early years. In fact, our problem is not unrelated to the problems of education and housing and the environments in which we ask these people to try to be straight human beings.

It is a terrible burden to put on people, too. I don't excuse crime, but I also think we can't simply deal with it by saying to people, you know, you were wrong, you're a bad person, we are putting you away. We have also got to deal with it by giving people things to aspire to and paths to get there that keep them from becoming criminals.

So I view prevention as not only police on the streets, but its has got to be a coordinated and thoughtful effort between those who understand how criminals behave with those who understand how to shape human behavior, and that means people in the education area and the housing area and the civil rights area, I think we need to work together to try to find out how to find a better path for people, as well.

Senator KOHL. All right, I think I get the drift of what you are saying.

I would like to ask you about tort reform. In a speech last March, you said, "The tort system is having a very debilitating effect on America's competitiveness." I agree with that and I share your interest in tort and product liability reform, and most people think that we need to reform some elements of our system.

So could you give us some of your views on, for example, joint and several liability, caps on damage awards, and reducing litigation costs. Talk about tort reform with respect to these issues.

Ms. BAIRD. We have a very vibrant system of civil justice in this country, with active use of the courthouse. But that active use of the courthouse doesn't necessarily give access to everyone, and one of the things that we need to talk about and think about in civil justice reform is how to improve access to the courthouse and make it affordable for people who can't hire lawyers at high rates for extended lengthy litigation.

We need to make people's rights able to be vindicated through the civil justice system, not just give them a right to file a lawsuit, but make that right real by giving them the ability to use the court room in an efficient way or alternatives to the court room to vindicate their rights.

And this goes back to the point Senator Kennedy and I were discussing on Tuesday about Legal Services Corporation. I think I mentioned that in Aetna's legal department, we run Connecticut legal aid to the elderly, but to qualify for that program, you have to have an income of \$10,000 or less as an individual. There are a lot of people who make between \$10,000 and \$30,000 a year who can't afford to use the civil justice system, but have rights every bit as meaningfully to be vindicated as those with less money or those with more.

So that is one aspect of this that I think this administration ought to focus on, and I think I have some understanding of the inhabitants to people in using the court room effectively that I can bring to that problem.

Now, there are other issues about what happens to anyone who is in court, such as some of those that you have mentioned. I do not believe in caps on punitive damages. I think caps on punitive damages hurt the people who are injured the most and those who are young, and it is not a fair correction of the problems in the civil justice system.

There are other issues that we should talk about more and look at. I haven't obviously had the privilege of looking at these issues from the point of view of being the lawyer for the people of the United States, and I would look forward to having that opportunity to see what kinds of liability rules simply create process making it harder for people to vindicate their rights and which ones would be helpful. We do—

Senator KOHL. In the interest of time, you said that the tort system has as debilitating effect on America's competitiveness. I tend to agree with you.

Ms. BAIRD. I was going to get to that issue, I am sorry.

Senator KOHL. Go ahead.

Ms. BAIRD. What I was talking about there had to do with, from a business point of view, is it possible to predict in actions what kind of lawsuits would be generated, is the system efficient to re-

solve disputes, or are there changes that can be made to make the system more efficient. Because the fundamental issue in American competitiveness is are there costs for American companies in doing business that don't exist for foreign companies, and one of the costs is the cost of litigation.

So you want to make sure, as a nation, that the costs of litigation that we impose on our companies is effectively directed toward important public values, and that is what we need to talk about, are there any reforms necessary, because, again, our system has built up in a very erratic way, based on a ruling in one town that is then picked up on elsewhere, and then a disconnected ruling based on some other facts.

I think what is important is that we as an administration, the Clinton administration, look at whether there is any rationalizing of a lot of what has built up over history here, whether it is in the way we spend our money on criminal law enforcement or whether it is the way lawsuits proceed in the court room. But I think that there are many examples of reforms in the civil justice system that we ought to look hard at.

Senator Biden I know has been a real leader in looking at some of these issues of reform in the court room, and I would hope that we would have a very vibrant dialog about what those ought to be and what ought to be the hallmark of this administration in that area.

Senator KOHL. Let me ask you about joint and several liability. A person owns 2 percent of a company and somebody else owns 98 percent and runs the company. The company is hit with an enormous liability suit. The person who owns 98 percent and is running the company doesn't have any money, and then a judgment is rendered entirely against the person with 2 percent.

Do you think that is right? Does that need to be revisited? Are you satisfied with joint and several liability rules?

Ms. BAIRD. I don't mean to disappoint you with this answer or avoid it. I am really very sincere. I have not looked hard at the joint and several liability issue. It is not one that I have focused on in my look at the civil justice area. But I would like to talk with you more about that and work with the Senate on that as to whether that is an area that we ought to focus on for reform. I would just need to look at it more.

Senator KOHL. All right. One other question very briefly.

Senator METZENBAUM [presiding]. Senator Kohl, your time has expired. Sorry.

Senator KOHL. Thank you.

Senator METZENBAUM. Senator Pressler.

Senator PRESSLER. Thank you very much, Mr. Chairman.

Welcome here.

Ms. BAIRD. Thank you.

Senator PRESSLER. Let me begin by asking a question about your effectiveness as Attorney General. I think we have gone through the immigration issue several times already. Let me ask you, for example, what would your credibility be if the Justice Department were to decide to have a sting operation, such as ABSCAM a few years ago, when the subject of illegal immigrants was used with public officials as an element of the Justice Department sting,

which resulted in several people going to jail, or leaving Congress and public office. I think the Justice Department operation was an appropriate activity. But the point is that illegal immigrants was a key part of the sting—the willingness of these public officials to keep illegal immigrants in the United States. The Attorney General of the United States headed up this operation. Would you be comfortable heading up such an operation?

Ms. BAIRD. Absolutely. I don't think that this incident in any way affects my ability to deal with these issues as Attorney General. The situation of domestic employees has been treated under the immigration laws a distinctive category. Domestic employees of three or under has been part of the public debate as a distinctive category, and my experience here would in no way inhibit my ability to deal with the full range of issues that would be in the Justice Department.

Senator PRESSLER. I am not in any way equating your situation personally with some of those situations, but the fact was that people were asked if they would assist in keeping one or two people in the county who were illegal immigrants as an initial question, and then oftentimes it led to many other questions. But the Attorney General of the United States had to appear on TV several times defending that whole scheme.

Public officials were asked to make phone calls or do something to help illegal immigrants stay in this country. And I am not saying that using this subject was wrong in any way. But the point is the Justice Department chose to use it as the basis or one of the bases for the sting operation.

ABSCAM was led by the Attorney General of the United States, essentially, and that person had to appear on TV to explain, and I think successfully many times, an operation involving mayors, local officials, and corporate officials—there were all kinds of people eventually brought into it.

Ms. BAIRD. Well, as I recall the ABSCAM situation—and I am not close to it, but as I recall it, the most controversial issue was whether there was any entrapment, whether, in fact, these officials were set up and that those were the toughest issues to defend. I don't even recall, but just from my general knowledge of having been in the Justice Department at the time, I don't recall any issue of illegal aliens, although I am not saying—of course, I am sure it was there, but I don't remember that particular issue myself. So I can't comment on the facts that you are talking about. But I can assure you that I in no way feel inhibited, reluctant, anxious about any issue that would come before the Justice Department.

I think I have put this issue, my own personal situation, in its proper context, and I don't think it would in any way inhibit me from fulfilling all the duties that I would be required to fulfill as Attorney General.

Senator PRESSLER. In ABSCAM, the initial questions concerned the willingness of a public official to assist in keeping illegal aliens in the country. And you feel that if the FBI proposed such a scheme to you again, you would have no hesitation about your credibility in the eyes of the American public, in defending the Government using illegal aliens as a test of ethics.

Ms. BAIRD. Senator, I have to say to you that it strikes me as a very unusual situation. I don't remember that particular episode, but I also don't remember any other circumstance where an Attorney General has had to put that issue to the American people.

In any such circumstance, I would, of course, look carefully to the lawyers advising me as to what was legally appropriate, including the lawyers involved with the immigration laws. And if the conclusion was that something was appropriate, then it seems to me appropriate to defend it publicly.

Senator PRESSLER. Well, no, I am not saying it wasn't appropriate because I think it was appropriate, and I think that it is used as a case in a lot of law schools around the country. The point was that in ABSCAM, the Attorney General had to defend the practice of using the issue of keeping illegal aliens in the country. And you would be fully comfortable doing that?

Ms. BAIRD. Well, it is hard for me to comment on what the next ABSCAM might be and what I might be called on to defend publicly. But I can tell you I feel in no way inhibited in performing the duties of this office because of this episode.

Senator PRESSLER. And you feel you would have credibility with the American public in defending such a scheme if it involved illegal aliens, keeping aliens in the country, or supporting them somehow?

Ms. BAIRD. Well, Senator, I have said that I believe that what I did was wrong and I have apologized for it and—

Senator PRESSLER. I know that. But I am talking about your effectiveness. I am not interested so much in what you did—I know you have apologized for it, and we have gone through all the facts. I am talking about your credibility, how you feel about your effectiveness as Attorney General.

Let's go to another example. Let's say that the Justice Department decided to launch a strike force—many raids on small businesses. There was a raid on a small business in western South Dakota, I understand, regarding illegal aliens. Would you feel fully comfortable going on national television and telling the American people the Government is going to start having raids on small businesses employing illegal aliens?

Ms. BAIRD. Yes, absolutely. I believe that the laws should be enforced and that the immigration laws should be enforced, and I believe they should be enforced evenhandedly, and I have no problem with that.

Senator PRESSLER. Now, the Attorney General traditionally speaks to the graduating classes of the Immigration and Naturalization Service, I understand, and commends them and sends them out on their duties. You would feel fully comfortable sending forth these graduates to search out people who violate the law?

Ms. BAIRD. I may better understand the difficulties that they face now than I could have otherwise as Attorney General.

Senator PRESSLER. Well, this is a concern I have, your effectiveness. And I am sorry to say that it will force me to vote against you. I know my ranking member has reached the opposite conclusion, and I think that the general consensus in the press is that you will be confirmed. I will be working with you. But I wanted you to know and everybody to know that my concerns are with your ef-

fectiveness, especially in cases where the Justice Department conducts either an ABSCAM-type operation or a strike force against small businesses. You have a leadership role to play. You are my kind of a person. I feel very badly about this. I wanted to say that to you. That is my stumbling block. But in everything I read, if it is to be believed, you are going to be confirmed. I will be working with you. Let me ask you some questions on the issue of Indian jurisdiction.

In my State, I represent a large percentage of native Americans. I just recently completed a meeting with tribal leaders, which I do frequently. I devote a good deal of my life working with Indian people, native Americans.

This year the topic the tribal leaders brought to me was tougher law enforcement on and near the reservations, which may be a surprise to some. Native Americans are concerned that Federal law enforcement personnel are not elected by the tribal constituency they serve. Therefore, native Americans feel very strongly they are not allowed to have input into the Justice Department. They are making it a project, working through the American Indian organizations, to ensure greater departmentwide sensitivity to tribal law enforcement concerns.

What can we do to put the Justice Department in closer touch with tribal leaders?

Ms. BAIRD. I think that if I am confirmed, one of the hallmarks of my tenure will be greater coordination within the Justice Department, with other agencies at the Federal level, with other agencies at the State and local level, including the police departments, and with tribal leaders.

I would want to look very hard at the issue of law enforcement on Indian reservations because there are really counterbalancing issues of firm law enforcement, but also making sure that it is fair and evenhanded relative to those who aren't on Indian reservations.

As I have gone around and talked to people, I have heard concerns on both sides of that question, that Indians get hit for things people don't get hit for off the reservations. But I have also heard, as you are suggesting, that there is inadequate law enforcement to support and to eliminate the fears of crime on Indian reservations relative to the surrounding areas. And I think that we have to do this in a way that is very—that we have to give this some very real attention.

Senator PRESSLER. Business owners in my State who operate establishments on fee-owned land within the boundary of Indian reservations have been the targets of laws passed by the reservation's governing tribal leadership that require them to pay a licensing fee in order to operate.

The business owners feel this amounts to taxation without representation as they have no means to vote for the tribal leaders who make the laws. The tribal leaders maintain that such laws are within their sovereign rights.

To resolve this and similar jurisdictional problems, these business owners must go to court, costing them considerable time and expense.

Would you support the creation of a Federal task force to examine the problems arising in Indian country over jurisdictional matters, or do you have some plan to approach this problem?

Ms. BAIRD. Senator, it is not a problem that I have yet looked at carefully, but I would want to work with you on it. I think that we need to improve generally our attention to these kinds of issues on Indian reservations.

Senator PRESSLER. On the issue of price-fixing, in 1984 the Supreme Court in *Monsanto v. Spray-Rite Service Corporation* held that a conspiracy to set a vertical price-fixing agreement is not established by proof that a manufacturer terminated a dealer following, or in even in response to, price complaints or other dealers. I think you are probably familiar in general with the *Monsanto* decision.

I am very concerned about small businesses in small cities and pricing nationwide. What is your thinking on that?

Ms. BAIRD. First of all, hard-core price-fixing and vertical price-fixing is something that we ought to pay a great deal of attention to in developing an antitrust philosophy for this administration. I would hope to have someone as head of the Antitrust Division who is well schooled in this and can help up develop very quickly truly an antitrust philosophy.

One of the principal areas we should focus on is resale price maintenance. What is it that should be required in the law to show that there was a price-fixing arrangement? Is it just a complaint like in the *Monsanto* case, or should it be as high a standard as Justice Scalia has said, where you actually need to talk about price and not just talk about excluding someone from the market?

I think we need to develop a point of view on this, and then seek out the cases and the enforcement actions to implement that. But I am very concerned about the issue because one of the great growth businesses in this country in the last few years has been the discounters, and the competition for price has been a very positive proconsumer development. And I think we need to find ways to encourage that through the antitrust laws rather than require people to struggle to make out cases.

You know, most of the discounters that I have heard about—and maybe this relates to the small businesses you are talking to—can't afford to bring antitrust actions. It is not going to do them any good to have an antitrust right of action because they can't afford those lawsuits. The antitrust lawsuits are very expensive, and they are very fact-oriented, and it is just too expensive. So they need the Justice Department on their side to bring the cases. They also need the Justice Department to make it very clear to their competitors what the running rules are. And so this requires a lot of thought and, I would hope, a lot of dialogue with the committee.

Senator PRESSLER. The issue of Federal prison construction is going to be before us, even more so with mandatory sentences, rightly or wrongly. In my State of South Dakota, we worked closely with Justice Department officials to bring a Federal prison to Yankton, which has worked out very well for the community because it filled buildings that were empty. There are one or two other cities in my State that have expressed some interest in ob-

taining a Federal prison. But there is some resistance to locating prisons away from where the inmates' relatives live.

Have you given any thoughts to the location of Federal prisons and to what our prison needs will be in the next few years?

Ms. BAIRD. I think we will need to build some prisons in the next few years. There is, as you point out—you have a real sensitivity to this issue. There is a question of what environment it is that we have to build these prisons in and how close to people's relatives the prisons need to be. And I would like to learn a lot more about that. I think it is terrific that communities are willing to have prisons in their community, that there isn't, as you are expressing in your State, a reluctance to bring criminals to that area.

What we need to think about more is where our prisons are for the whole range of interests, the rehabilitative interests, and also the interest in giving people some human contact with their relatives and that sort of thing. So we have got the punishment interest; we have got the rehabilitative interest; and we have got the interest of not inappropriately separating people from family. And I think we need to work through what our policy should be on that, but I think it is a wonderful thing that the people in your community are welcoming of these institutions.

Senator PRESSLER. Well, some people do in certain instances.

Let me close with this question concerning smaller-city crime. I know the money and the attention to train police frequently goes to big inner-cities where crime is centered, which is perhaps necessary sometimes. But there are a lot of problems with the training of police officers in rural areas and smaller cities, where police officers might be part time, but yet the percentages of crimes are frequently, on a population basis, as high. I have been one who has fought very hard to be sure that rural and small cities are accorded equal treatment when it comes to Federal funding.

I don't know if you have any concept of the fact that sometimes it is much more difficult to fight crime in a rural area or a small city where we just don't have the same level of training of police officers. That training is costly. I hope you will support the concept of equal treatment for smaller cities and rural areas in crime-fighting funding.

Ms. BAIRD. When I have met with all the major police organizations, small towns, large cities, we have addressed this issue somewhat, and I think it needs a lot more conversation, because you are absolutely right that in many ways the rural communities and small towns have a harder time getting the resources and the training.

President Clinton, in calling for 100,000 more police on the streets, didn't just mean urban streets, and we need to talk about how to divide those resources in order to address the unfortunately rapidly developing incidence of crime in smaller towns and rural areas.

The CHAIRMAN. Thank you, Senator.

I might add on the rural crime, rural crime in America is rising at a faster rate than it is in urban America. Rural crime in America is in worse shape than it is in urban America because there is not the expertise of one- and two- and three-person police forces to be able to get the kind of expert training that is available to police

in urban areas. I am not in any way denigrating the problem urban area law enforcement has.

The third point I would make is that in the crime bill that we introduced last year, there is a major section of the crime bill on rural law enforcement, and it requires a major allocation, demands it. And I must tell the Attorney General nominee, if she is Attorney General, I can assure you the Chair of this committee is going to absolutely insist that the formulation of distribution of funds to local law enforcement have as a guaranteed minimum to rural areas. I for one will support no legislation that does not do that, and I hope you get a chance to look at that, and I know you have.

I have two brief announcements. One is that I think you should take a break for about 5 minutes.

Ms. BAIRD. Thank you.

The CHAIRMAN. Ms. Tyson is up on the Banking Committee being confirmed, and that is the reason why Carol Moseley-Braun, Senator Braun, is up there. But we will come back in 5 minutes at 25 of. We will complete this morning's round by hearing from Senator Feinstein and Senator Moseley-Braun, both of whom are the last two on the panel to ask questions. Then we will recess until 2 o'clock.

We will now recess for 5 minutes until 25 minutes of 12.

[Recess.]

The CHAIRMAN. Welcome back, Ms. Baird.

It is with a great deal of pleasure—I have been waiting to do this for a long time—I recognize the Senator from the State of California.

Senator FEINSTEIN. Thank you very much.

The CHAIRMAN. Senator, welcome.

Senator FEINSTEIN. Thank you.

Ms. Baird, I don't know you very well, but I want to be very upfront with you. It is my very deep belief—and I say this as a way of also letting the administration know this—that the best interests of the United States in terms of the Attorney General are really served by somebody who is familiar with law enforcement, understands the streets and understands the applicability of Federal law as a deterrent to crime that is sweeping this Nation in an unprecedented basis.

Having said that, it is not lost on me that you are a very qualified woman, that you have had a distinguished career thus far, and I would like to be able to vote for you. Now, I want to ask you some specific questions. To this set of questions, I would like a yes or no, if possible, or an "I did," "he did," or "we did" answer, so that we might be able to see in another perspective what happens when two people work in a family and certain tasks are delegated to one member of that family.

Did you know the provisions of the Simpson-Mazzoli Act at the time this hire was completed?

Ms. BAIRD. Let me answer yes, and then let me elaborate. As I said on Tuesday, I understood from what my husband told me, not from reading the statute or not from talking to the lawyers myself, I understood that the law in this area was that it was a violation subject to civil penalty to hire someone who didn't have their documentation. But I also understood that that was not perceived by

the enforcement agencies as an enforcement matter, and that there was a process to clarify the situation, correct the situation, regularize it—I don't know what the words are that are used—and that it was that process in which one can fully disclose the current employment of the individual.

Now I say none of this to excuse this, but I am just trying to give a picture in response to your question.

Senator FEINSTEIN. Thank you.

Did you or your husband actually place the ad in the newspapers?

Ms. BAIRD. My husband.

Senator FEINSTEIN. Did you or your husband actually interview the couple?

Ms. BAIRD. We both did.

Senator FEINSTEIN. Did you or your husband or both make the decision to hire?

Ms. BAIRD. We both did.

Senator FEINSTEIN. Did you or your husband have the discussions with attorneys on how to comply with the law in this particular situation?

Ms. BAIRD. My husband had those conversations.

Senator FEINSTEIN. It is my understanding that you filed an I-9 form for your prior employee yourself, is that correct, before this couple came?

Ms. BAIRD. For the prior employee, I completed an I-9 form. The requirement is that you have it, not that you file it. Yes, I did have the I-9 form for the prior employee.

Senator FEINSTEIN. Did you have it for this couple?

Ms. BAIRD. My understanding is that my husband did not complete an I-9 form and that is part of what the penalty was that we have accepted and paid.

Senator FEINSTEIN. I very much appreciate the fact that you have essentially taken the responsibility for this and said that "I was wrong, I broke the law, I paid the penalty, I am sorry, I want to put this behind me now." I think it is important, though, for me to understand the situation that you found yourself in, as a working mother, not in legal terms, but in human terms.

Ms. BAIRD. I had, as I have tried to explain without taking too much time of this committee on this side of this, I had my first and only child, a then 8-month-old boy. I was beginning the most challenging job of my professional career as the new general counsel of a major company, I believe probably the first time a woman has taken on something like that for a company of that size and complexity, but probably more importantly in my circumstance, it was a major new challenge for me.

I had some of the credibility issues that people have referred to here, you know, here is a woman coming in who is younger than I am, and she has got a kid and can she really do this job. So I had a major commitment in those early days to try very hard not only to do the job well, but to deal with all the credibility issues that come with that.

Again, I don't want to sound like any of these human factors you have invited me to address in any way excuse what I did, but they certainly were present and they were present in—they were, of

course, the reason that my husband took responsibility for looking for and attending to the child care. They were present in my not following closely what he was doing.

Of course, I had at that time also the very deep concern that whoever it was who took care of my child was experienced in the handling of the child, because he would be with her for so long and would provide stable care. I had already had the experience of someone leaving fairly abruptly, a couple of weeks notice, without substitute child care and my son having that disruption of the continuity of care, so this young woman promised both experienced child care for my son and someone who would be there for some continuous period of time, someone who really wanted this job, wanted to be with him.

Mixed in with all of that, I would just add at the end of it was the fact that I had very limited time with him and so I tried to structure my life in a way that I would have as much time with him as possible, and when I wasn't with him, there was someone there who would continue to give him some of the same feeling that he might have had were I there.

The CHAIRMAN. Senator, excuse me for interrupting.

Would you mind if I asked whether or not you would give us, Ms. Baird, a typical day? You say the person was with you for so long. Tell us—

Senator FEINSTEIN. Does this count against my time, Senator?

The CHAIRMAN. No, it doesn't.

Senator FEINSTEIN. Good. Thank you. [Laughter.]

The CHAIRMAN. No, it doesn't. [Applause.]

Even though I am at the brunt of this, please, no applauding. But I think it would be helpful in this context if you would, on my time—and click this back another couple minutes, so the Senator—tell the Senator and I and others what your typical day is. When did you leave the house in the morning and when did you usually get back?

Ms. BAIRD. Well, what I was trying to express is that this is not a 9-to-5 job. It was a job that was much more demanding than that, not that a 9-to-5 job can't also be terribly demanding and that women who have 9-to-5 jobs probably face exactly the same problems I do.

But I was feeling at the time the strong tension between being the mother of a new child and taking on a new job that was so terribly demanding. The typical day was I left in the morning at 7 or 7:30, and I came home at the end of the day anywhere from 6:30 to 7:30 or 8, depending on the day. I was working in Hartford, which is an hour from my home. For many people, such as those in California, that is not an extreme commute, but it is an extreme commute where I live and it added 2 hours to the day in terms of time away from my child.

The CHAIRMAN. I thank you.

Senator, thank you very much for allowing the interruption. I will not interrupt again.

Senator FEINSTEIN. You are welcome, Mr. Chairman.

I would like, if I may, now to learn a little bit more about your philosophy with respect to the duties that you are going to find before you. Let me talk about my concerns with immigration, as a

Californian. I am told that there are a number of border control officer positions that are currently authorized but not funded.

At times, as many as 5,000 people a night can come across the border in southern California illegally. The obvious concern about that, with heavy unemployment, inadequate schools, a lack of affordable housing, is clear.

My question to you is: Will you energetically and persistently and enthusiastically see to it that those border positions are filled and funded, so that the border might be better enforced?

Ms. BAIRD. Border Patrol is clearly a very important issue, and I have heard this, that in California it is very acute, and I would like to learn more about it. We talked earlier about my visiting a border area and seeing what is really happening there.

One of the things I would really hope to bring to this job is the ability to refocus resources so that the American people get their dollars spent in a more effective way. I think that we don't demand enough of that from Government.

Senator FEINSTEIN. Excuse me. Is your answer yes, no, or I don't know?

Ms. BAIRD. The answer is yes. The answer is yes, and the point I am making about it is that it is not just a matter of getting more dollars appropriated or not taking them away from the border areas, but it is also I think a matter of making sure that those dollars are spent most effectively at the border. Some of the shifting around that happens I think happens because people are searching for dollars, instead of searching how to provide the highest value for the dollars.

Senator FEINSTEIN. Do you believe assault weapons should be banned from civilian use?

Ms. BAIRD. I believe that we should move very quickly to try legislatively to ban semiautomatic assault weapons, and this is something that President Clinton also is committed to, yes.

Senator FEINSTEIN. I didn't quite understand your response to Senator Kohl's question on the Brady bill. The question I would like to ask is whether the Brady bill stands within an omnibus crime bill or without it, do you support the Brady bill?

Ms. BAIRD. Yes.

Senator FEINSTEIN. Thank you. You mentioned earlier that it is clear that we need to do something with juveniles, the dramatic increase in juvenile crime, youngsters with assault weapons on the streets of our cities, drive-by shootings. What specifically would you recommend be done?

Ms. BAIRD. This is an issue that I, of course, need to study a great deal more than I have had the opportunity to do yet, but it is very clear to me, living in an urban area, that we are not providing enough support to juveniles and we are also not providing a clear enough statement that they are subject to punishment for committing crimes.

We are committed, this administration will be committed to assuring that there are places of incarceration for juveniles. One of the problems now is that juveniles are put out very quickly on probation and the probation officers can't give them what they need to rehabilitate them. We need to have boot camps, we need to have other institutional mechanisms, making a very clear statement to

juveniles that if you commit a crime, you are going into one of these institutions and there is a dramatic change in one's life that is going to take place from committing a crime.

The other thing we need to do, as I was beginning to discuss with Senator Kohl, is we need to work with other agencies to try to change the conditions that cause juveniles to look to crime as their only option.

Senator FEINSTEIN. Let me speak for a moment about the drug czar. I think historically we have looked at a drug czar and said, okay, the drug czar can now take the responsibility, we will make the drug czar Cabinet rank, and that is going to make a big change in narcotics in this country. I don't really believe it is.

I think that the Attorney General of the United States must be a knowledgeable, impassioned leader on this subject, seek out every opportunity to see that this Nation has a balanced program of interdiction, of street enforcement, and of prevention, and must really be knowledgeable about what works and what doesn't work, because there is a lot of mythology out there, when it comes to drug use and who is doing what.

You are a very bright woman, no question about that. My concern is can you take off this sort of precise lawyer's hat and really go out there and organize and lead a campaign to make people in this Nation understand what is happening with the proliferation of drugs? Can you then see to it that your Department, large, unwieldy, often on its own, can become a kind of precise instrument to deal with this with a broad spectrum of programs?

Ms. BAIRD. I will give you the first one-word answer. The first one-word answer, yes. I obviously am not a politician and there is always a tension in trying to figure out who would be the best Attorney General, should it be someone who is a politician and has run a campaign like that, should it be someone who is a prosecutor and has prosecuted cases, should it be someone who is able to listen to a range of interests and come up with creative solutions and make everyone work together and actually solve problems, and the latter is what I am known for and what I think I bring to this.

I think also that I can generate a sense of hope over these issues, which is going to be very critical, a sense that it is possible to address them, and that is an element of the public campaign on this issue that I think is very, very important.

I would also hope that articulate Senators would become part of the campaign, so that we coordinate our efforts and together work with the common purpose toward a national campaign of the type you describe. I think you are very, very right to say that we shouldn't pass this off onto the idea of a drug czar.

The point of a drug czar is to put central White House authority in coordinating the work of different agencies. But you are absolutely right, the Attorney General has to make a very strong statement to the American people day in and day out that we are going after the drug problem hard, and I would commit to you that, as Attorney General, I would do that.

Senator FEINSTEIN. Please, this is very important. I think that Zoë Baird, magna cum laude scholar, law review editor, is long in the past. I believe that if you are confirmed, what has to emerge

is Zoë Baird the fighter for the people of America and for the streets of America, and that I am uncertain about. It is a big job.

Ms. BAIRD. I can tell you I forgot to put those things on my Judiciary questionnaire when I first submitted it and had to submit them late. I agree with you that that isn't the definitional quality of who should be in this position.

But I don't have any question in my mind but that if you are sitting here in 2 and 4 years, you would feel that the American people have come to think that there is someone in the Attorney General job who might actually make a difference on these problems, where it won't be business as usual and turf fighting and squabbling over who has got what responsibility for what problem, where there will be someone out there who knows that she is the Attorney General for the people of the United States, who has particular sensitivity to how these issues play out against women where they are acute, who has sensitivity to the range of problems of minorities living in desperate conditions in cities and doing what they can to get by, who doesn't excuse white collar crime, because she has worked in business.

In fact, I think people will find that I will understand how to get at white collar crime in ways that other Attorneys General without my experience may not have understood. So I very much value and appreciate your concern, Senator, that a big part of this task is to create public confidence.

But I believe I can create public confidence through results, through making people think that, in fact, this is a different Justice Department, that this is a Justice Department that has the potential for really solving some of these problems, not just throwing money or people or words at them. And I think if I am confirmed, that you will feel good in 2 to 4 years that I am doing that.

Senator FEINSTEIN. Well, I am heartened by that, because that has also been a concern as to whether someone whose whole life has been lived essentially as a corporate counsel really go out there, take off that hat, and when you see impropriety, go after it like a tiger. What you are saying to me is you are prepared to do that, and if I understand you, what you are saying to me is that you perhaps know more about white collar crime, because of where you have been.

Mr. BAIRD. I think in that area I probably know better what influences people and how to get at it, what questions to ask to find it, and what influences to change in order to go get at white collar crime, and I also believe firmly that there needs to be very tough enforcement of white collar crime.

Again, this goes back to the point I was making earlier about the even-handed enforcement of the laws. I think we have to be very strong in the criminal law area of giving people the confidence that the laws are enforced in an evenhanded way, and that includes how we incarcerate people, and I think we need to look at that. I really do.

I think even where we have over the past 10 years gotten very tough on white collar crime of certain types, there have been very mixed signals about how people are dealt with, and we need to look at our plea bargain policies and our incarceration policies and

make some real judgments about how to better communicate and, in fact, effectuate even-handed enforcement of the laws.

Senator FEINSTEIN. Another thing that quite surprisingly troubles me a little bit is the statement that you would make public the name of every person that called you. You could have very few phone calls—are you aware of that? The danger is you could become isolated. [Laughter.]

Ms. BAIRD. Well, Judge Bell did this probably for the first time in the history of the Justice Department. It may have been his personality, but I don't think he felt that he got fewer phone calls.

I understand what you are saying, as a counterbalancing consideration, but in my judgment, there is way to do this that helps restore public trust, but doesn't inhibit people from talking to me, and I would like to try to do that. As I say, Judge Bell did this in his tenure as Attorney General. I think he did it very effectively.

Senator FEINSTEIN. Thank you very much.

Ms. BAIRD. Thank you.

The CHAIRMAN. Senator, would you like to ask any more questions? Seriously, you have waited a long time and if you have any followup questions you would like to ask now, rather than wait the second round, for another 5 minutes or so, you are welcome to do it.

Senator FEINSTEIN. I think I have asked my questions. Thank you very much.

The CHAIRMAN. Now, rather than have Senator Moseley-Braun ask her questions now, she is presently in the Banking Committee questioning the nominee there. We will come back at 2 o'clock, and the first questioner will be Senator Moseley-Braun.

We are recessed until 2 o'clock.

[Whereupon, at 12:06 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order. I apologize for the delay again. Welcome back, Ms. Baird.

The intention of the committee is to proceed for as long as it is profitable. It would be my hope, although it is not my expectation, that we could finish tonight.

Senator Moseley-Braun is our next questioner, but she is tied up still at the moment with Banking Committee members. So the way we are going to proceed is I will proceed and ask my questions on the second round; then we will go to a Republican who has questions in the second round; and then to Senator Moseley-Braun for her first round of questions.

With that, why don't we proceed.

As you know, Ms. Baird, one of the most important responsibilities of the Attorney General is to be the Nation's chief law enforcement officer, and you have been asked questions about how you view that responsibility by others thus far. The responsibility not only entails the vigorous prosecution of criminal cases within the Department of Justice; it also requires the Attorney General to exercise leadership on law enforcement issues, to work with State and local law enforcement issues, to work with State and local law

enforcement and the Congress and the American public to shape tough and fair criminal justice policies.

Now, I know and I am extremely pleased that you took the time to meet with the leading law enforcement agencies in the country, representing local law enforcement as well, and to discuss with them your keen support for and interest in the President's commitment to adding more local law enforcement persons and better coordinating the Federal responsibility with the local responsibilities.

As a matter of fact, later in the day we will, hopefully—if not today, tomorrow—hear from leading representatives of the Nation's law enforcement agencies, who are going to testify in support of you.

So I don't want to get, though, into the excruciating details at this moment on the point of law enforcement and the particular relationship between local and Federal, but I am sure there will be more questions that will go on after I finish my round.

But can you tell us what is your current sense of two or three of the most—what you believe at this moment are two or three of the most pressing law enforcement issues facing you as the incoming Attorney General?

Ms. BAIRD. I think the largest commitment that I must make as Attorney General is to address violent crime in this country, and to do that, we need to pass the crime legislation that has been considered here in the last session of Congress. We need to take care of some of the limitations in current law which would include adding the death penalty for some Federal offenses. It would include passing the Brady bill, as we have talked about several times today. It would include habeas reform to strike this balance between creating finality and a fair system, and the other aspects of this crime bill that must get put together and passed as quickly as possible.

The CHAIRMAN. Well, I have had the occasion to speak with the President on this matter while he was still the President-elect, and he has indicated to me personally and to the majority leader, and I suspect as well, I believe as well to the minority leader, that he would like to see the crime bill as written passed, the one that we, in fact, passed out of this committee, came out of a conference report. He indicated he would like to see swift movement. He was kind enough to ask me what I thought was the best chance of seeing things move because he feels very strongly about this. And I wonder whether or not you have had the occasion to determine whether or not the bill that was the conference report, the bill, the crime bill, referred to as the conference report, which was left languishing, is in its essential form the appropriate vehicle for a new crime bill, or are there major changes you think have to take place in that bill before we could move, before the administration would be willing to move with us for passage of a crime bill?

Ms. BAIRD. Both President Clinton and I would like to see us pass that bill to the greatest extent we can intact. There are some areas that we need to look at. I certainly haven't had a chance to talk with him yet in detail about habeas reform, for example. There are some areas that we are going to have to look at. But I think the hope is to try to move that bill, with its general contrast, as quickly as possible.

The CHAIRMAN. Now, I fortunately have had a chance to talk to him because—and I mean this sincerely—I have had a fairly limited agenda with the President, and you have a great deal. With the 90,000-employee law firm you are about to take over, there are a lot of things to have to consider. But he indicated to me—and I will not ask you to comment, but just to tell you what I know—that the habeas corpus reform essentially as written is something that he supports, he indicated to me.

Now, that doesn't mean there can't be any change, but I don't want to mislead anybody here, particularly my Republican colleagues or some of my liberal colleagues my conservative and liberal colleagues. I don't think we are going to be able to pass a habeas corpus reform bill that is fundamentally different than what is in the legislation now, by either moving it to the left or the right in popular political parlance. I think we may be able to fine tune it where we are, and it is my understanding—and I am not asking you to respond, but asking you, as one of the first orders of business, when confirmed, to move forward and give this committee as quickly as you can, as hard a read on the specific position relative to habeas. Because as our good friend Senator Thurmond will remind us all, habeas corpus is, from his perspective, the essence of the entire crime bill.

I don't believe it is the essence of the crime bill. It doesn't need to be reformed, so that has been a serious stumbling block.

Now, another matter that I had occasion to raise with you—and, again, I do not expect you, Ms. Baird, to be able to answer this in detail because you obviously haven't even had a chance to assemble your team and make a firm recommendation to the President on what are very complicated matters relating to criminal law enforcement issues. But as you know, this committee has on two occasions passed out of here unanimously a bill entitled—that has been sponsored, that I and others have written and sponsored, referred to as the Violence Against Women legislation. For me personally—and we will have our separate agendas, and I know the Senator from Maine has an overwhelming interest in the violence against women issue, though I am not suggesting he agrees with everything in my bill. But for me, it is the single most important criminal justice priority after passage of a comprehensive crime bill.

What I would like to ask you about in general terms is the issue of violence against women. Are you of the view that there is a circumstance in this country as a consequence of State laws impacting on domestic violence, or not impacting on domestic violence and spousal abuse, the inability of stay-away orders issued in one State—that is, an order where a woman is being stalked by her former husband, lover, boyfriend, or someone she has never seen in her life, but usually by someone she has known—and a State issues an order suggesting that John Doe must stay away, literally, physically stay away from that individual. When that woman crosses a State line, as you know better than I do, that order is of no consequence. It is a State order. That person can harass the woman. That person can—and we have many instances where they have murdered that woman or physically abused the woman short of death. And I am of the view, as is my friend from Maine, that there should be a federalized legislation saying if you get a stay-

away order legitimately arrived at in one State, that that should be, in effect, transferable from State to State so that the woman cannot be harassed.

And, last—and I am going to stop and ask you to comment generally on the violence against women legislation or issue—one of the reasons that I wrote this legislation in the first instance several years ago, Ms. Baird, is I found a startling statistic as I was going over the statistics from the Bureau of Justice that lists all the crimes that are reported. I thought violent crime was the ultimate equal opportunity employer. I thought that violent crime was visited upon all sectors of society, age and sex, to the same degree, and increased the same degree. And I was startled to find in a 10-year period leading up to 1987 that violent crime against men between the ages of 15 and 24 actually decreased by 12 percent; violent crime against women increased in that same period of time by 50 percent, 5 to 0. A 62-percent difference.

Now, we have held extensive hearings, Ms. Baird, on this committee, and admittedly some of the increase may be as a consequence of the generalized and specific women's movement, rightfully encouraging and emboldening women to come forward to report crimes that they weren't reporting before. But I can find no evidence in the literature or even anecdotally that suggests that the entire difference, discrepancy between violent crime against men 15 to 24 and women 15 to 24 is accountable by women being willing to come forward. There seems to be a legitimate, real, hard-core difference where women are victimized more than men.

Without my talking any more—that is an awful long prelude to a question in an area of great concern to me—I would like you to share with this committee your generalized, and as specific as you want, views as to whether or not the extent of our collective concern here is legitimate and, if so, whether strong action has to be taken.

Ms. BAIRD. Senator, I would commend you for your focus on this issue and commend you for the search for those statistics, because I think that there is no question but just about every woman in this country would tell you that she feels more vulnerable than the men around her. It doesn't take a search for statistics for most women to appreciate that violence against women is an acute problem.

I have looked at this legislation some, will need to look at it some more in terms of its technical detail, but I can tell you today that President Clinton and I would support this legislation, and I would give it a high priority. I think it is very important. And I think it is important for the reasons that you have stated in terms of the particular problems it is addressing, the details of the law. But I also think it is very important because it makes a very strong statement to women that the Federal Government, this Congress, this President, appreciate how profoundly they are affected by crime and are trying to do something to address that problem.

So I think that it has an impact that goes beyond the specific cases that it will help resolve the particular circumstances where an order applies in another State or where gender bias is the basis for an approach to a problem or a gender issue is the basis for a crime. I think that it has an even more powerful effect about what

this Congress and this Federal Government is saying to women in recognizing that they are more vulnerable. And so I very much support this and think that it could be a very valuable way for this new administration to begin to work at the crime problem with this Congress.

The CHAIRMAN. Well, I appreciate that. The next question I have, if you have an answer, I would be delighted to hear it. But I acknowledge you may need time to confer with the President and others as to whether or not you support what I am about to suggest.

Everyone seems willing to support my violence against women legislation as it relates to providing for more police officers, better lighting in places where women are more exposed. For example, today the evidence shows that many more women are professional women like yourself, like you having to work 12 and 14 hours a day and figure out how to take care of their children, and going to bus stops at 10 o'clock at night when it is dark or going to their automobiles in parking garages at 10 o'clock at night after working late, whether they are working as a maid in an office building or as a senior partner in a law firm or a senior executive in a bank, they go there late, they are by themselves, they are in circumstances—and the only thing we have found that works, literally not figuratively, is light, l-i-g-h-t. Lighting. That makes a big difference in terms of the incidence of crime.

We provide in this legislation moneys for those areas which would impact most upon the crime, occurrences of crime where they most often happen in cities. And everyone seems to be for all those kinds of things. The one place where I find my initiative runs into some difficulty—and I will end with this—is in the area of changing the status, the civil status, if you will, of a violent crime against a woman.

In this legislation, which I think is the most important part of the legislation, one of the titles requires that we make a crime that is based totally on gender—and that would be a matter of proof in a courtroom—providing that the reason why the man—and it could be against a man as well. If you can prove that the crime is motivated solely as a consequence of the gender of the individual, for example, if I walk outside and someone knocks me down and steals my wallet and then runs by you and knocks you down and you have a concussion and steals your purse, you would not under the Biden legislation be able to go into Federal court and try to collect damages and/or—unless it was on Federal property—and/or have your case prosecuted against that individual if they were caught.

Conversely, if the crime can be shown by the prosecutor to be directed against you or me, a homosexual rape at a prison can be against a man as well as against a woman, a crime specifically directed against you because of your sex, then this legislation calls for the creation of a civil remedy, and that is making this a civil rights violation, because your civil right as a woman has been trespassed upon. Because we find that the rapists who commit, on average, one rape every 6 minutes in this country, they tend to be doctors and lawyers as well as people who are crouched behind garbage cans in alleys at 2 o'clock in the morning and preying on women.

I wonder whether or not you have had any opportunity to focus on what is admittedly the single most controversial piece of my legislation, and from the standpoint of those who support it the single most innovative, from the standpoint of those who oppose it the single most intrusive Federal effort relative to giving women both a civil cause of action as well as a criminal cause of action, the State taking your case against the perpetrator of a sex-based crime, a gender-based crime.

Ms. BAIRD. Senator, I think it is a very interesting approach and that I would like to work with you on it. I think that we need to look at how it fits with the civil rights laws. We need to look at how it fits with the availability of just sheer time in the courtroom in the Federal courts. And we need to work on all that, and those are all interests, I know, that you have very much at heart generally, quite apart from this legislation. So I think that some of the concerns that have been raised we ought to try to work through, and I would hope the privilege of working with you on it.

The CHAIRMAN. Well, General, if you become Attorney General, one of the reasons—I realize my time is up. One of the reasons why we have these hearings, this is one of our rare opportunities to also impress upon you what each of our individual priorities are. I assure you the day after your confirmation, I will either ask if I can be invited to your office, or always invite you to my office, to attempt to resolve very rapidly the position of this administration on what I believe to be a constitutionally permissible and practically necessary remedy to be made available to the women of America.

Ms. BAIRD. Senator, If I could just add one more comment, I realize that my time may be out—

The CHAIRMAN. No, your time is never out. You can talk. There is no clock on you.

Ms. BAIRD. I have already had some conversations with some of the people who have in the past expressed reservations about this legislation, and as I have had those conversations, I see some greater common ground than I think may have been expressed in a different environment. And so I would hope that this administration, and with my leadership, could make some real strides there toward bringing that together.

The CHAIRMAN. Well, you have a reputation for being able to bring together disparate views. If you can bring together the Chief Justice of the United States and me on this issue, you not only are likely to be a great Attorney General, you may win the Nobel Peace Prize. [Laughter.]

But I look forward to that. I would like not to have the antagonism of the Court. I quite frankly think it is outrageous for the Court to suggest that just because a civil rights action may be available that women will use it to leverage domestic relations arguments. I think they should visit the emergency rooms of this country more to see how women are victimized by—at any rate, I—

[Applause.]

The CHAIRMAN. No, no, please. I ask again, I understand the enthusiasm for a lot of issues that may be raised here, but if we could, to the extent possible, maintain the decorum of the hearing and not have any show of applause, or disapproval.

Senator Hatch.

Senator HATCH. Thank you, Senator Biden.

Ms. Baird, in the campaign, now-President Clinton promised that aggressive enforcement of Federal obscenity laws by the Justice Department, particularly the child exploitation and obscenity section, will be a priority in the Clinton-Gore administration. Do you intend to continue the Justice Department's priority on the prosecution of obscenity?

Ms. BAIRD. I think that you will find, Senator Hatch, that this administration will be very attentive to this concern as part of its concern about children as well as its concern more generally, and I would hope myself to have the opportunity to look hard and see whether there is a way we can be more effective in these areas.

Senator HATCH. There has been some criticism about prosecutorial discretion in filing multiple suits and multiple indictments in multiple areas. I hope you will look into that as well.

Ms. BAIRD. Indeed.

Senator HATCH. Because I question whether—you know, that may be a good way of putting the pressure on people, but if it is putting the pressure on people who really have first amendment rights and privileges, I am concerned that it be fair both ways. But we ought to go after those who are true purveyors of obscenity and pornography.

Ms. BAIRD. One of the things I would generally hope to bring to the exercise of the prosecutorial power in the Justice Department is an understanding of the excesses to which the prosecutorial power can be used. And there are many areas where we want to make sure we have very good not only guidelines but instructions to our prosecutors to ensure that there isn't harassment or excessive zeal, if you will, and abuse of that prosecutorial power.

So while it is clearly very important that we try to protect children from these kinds of activities and it is very important that we vigorously seek prosecution and seek to enforce the laws in the criminal area and the environmental area generally, I think it also has to be a hallmark of this administration—and it would be of my administration of the Justice Department—that we not only, as I say, have guidelines on the use of prosecutorial power, but we have leadership and we have training and we really work at the appropriate exercise. Because if we have excessive zeal as prosecutors, the public is going to lose confidence in their Justice Department and in their prosecutors. And that lack of confidence will result in a retrenchment, a taking away of the power that prosecutors now have been given.

Congress has given prosecutors tremendous power out of Congress' concern that the laws be enforced, and I think that we have to make sure that that power is used wisely in order to preserve public confidence and the legitimacy of the power itself.

Senator HATCH. Well, thank you. Those are good comments. I have to say that there is a lot of criticism out there right now about the abuse of prosecutorial discretion, and sometimes the abuse of prosecutorial power. I myself have real problems—even though I was one of the most vociferous promoters of the sentencing guidelines, I have lots of problems, as you and I discussed in my office, because I believe that the power of the prosecutor is becoming

much more enhanced that it needs to be through the use of those guidelines.

There really is a raging debate whether we should trust the judges to exercise the right degree of compassion and yet the right degree of sternness. And I tend to think we left a better process for one that is not working quite as well.

As part of this, and I would hope that in your tenure that you would look this over, because we also have the complaint that there are prosecutors out there who are playing political games with these very important U.S. attorney's offices. And I don't think there is much of that, but to the extent that there is, I would hope that you would work hard to get politics out of the criminal justice system. I think that is the better way of handling these matters.

As part of this committee's oversight functions, I want to ask you if the Justice Department under your jurisdiction would provide the committee with copies of the consent decrees and litigated judgments in the Civil Rights Division in title VII employment cases after they are filed in court. Will you be able to do that?

Ms. BAIRD. I am really not in a position, Senator, to make a commitment on that. I would have to look at it more carefully. I am not as current in that area as I would like to be.

Senator HATCH. It is a very serious area, and it is one where I hope you will be able to do that so that we can at least have a good idea of how the law is working in that area, because it is a very touchy area, a very difficult area. A lot of people are concerned about it, and rightly so.

I want to ask you about your views on the 14th amendment, equal protection clause. Should State and local government discrimination against whites be judged by the same demanding standard of review as applied to discrimination against racial minorities?

Ms. BAIRD. Senator, I think there that what I can say to you is that I would follow the law as it is established by the Supreme Court and would be very careful in doing that. I think that the Justice Department has a strong responsibility to carefully follow that law.

Senator HATCH. In my view, the same standard of strict scrutiny review should apply to all recall discrimination, whether it is against racial minorities or against whites, and I don't think there should be any double standards. As I understand it, the Supreme Court so ruled in the *Croson v. City of Richmond* case or decision, applying strict scrutiny to Richmond's racial set-aside requirement for subcontractors. In doing so, the Court struck down the set-aside provisions because they were predicated upon general societal discrimination as opposed to specific findings of racial discrimination in construction contracting in the Richmond area.

Do you agree or disagree with the rationale and the result in that particular case, *Croson v. City of Richmond*?

Ms. BAIRD. Well, let me answer the question this way: I think that the Court's search for affirmative action remedies to apply to instances of actual discrimination and to a certain kind of diversity need is a standard that is appropriate, and that is, I think, what you are talking about.

Senator HATCH. It is. On Tuesday, you said that you supported the death penalty, the Federal death penalty for certain crimes. Today I would just like to explore one aspect of that particular issue.

We all oppose racial discrimination in the enforcement of the death penalty, and the legislation I have supported to restore the Federal death penalty contains safeguards against such discrimination. But what we have seen up here in the last few years is something that I consider mislabeled. It is called the Racial Justice Act.

This provision imposes racial statistical requirements on the use of the death penalty, essentially requiring that it be enforced by racial quota. Now, it effectively overturns a Justice Powell opinion *McCleskey v. Kemp*.

Could you tell us your view of racial statistical requirements like this one in the application of the death penalty?

Ms. BAIRD. I think it is appropriate to be thinking about legislation that addresses the issue of the racial implications of the death penalty, but the question of what that should be is one that requires some study and some dialogue between the Justice Department and this committee.

The problem, of course, that that legislation is trying to address is whether there is any racial bias or the racial implications of the application of the death penalty and whether there is a Federal role in attending to that particular result.

On the other hand, it is critically important in my mind that there not be a statute passed which is going to preclude States from being able to actually carry out the death penalty, and the principal criticism of that legislation is that it will, indeed, preclude States from carrying out the death penalty because the standards that will be required of States can't be met. And I think that we need to look very hard at this. It obviously has a laudable purpose of trying to protect against racial bias, but it can't be that we have legislation passed which is going to inhibit States from actually carrying out the death penalty, in my judgment.

Senator HATCH. It is a tough issue and nobody wants to see discrimination, certainly, in the use of the death penalty.

Ms. BAIRD. Yes.

Senator HATCH. In your Urban Lawyer article that you wrote concerning the *Garcia* case, you state that the Supreme Court's legitimacy is the "ultimate judge" of the Constitution rests on its construing the Constitution in a neutral objective manner, applying principled reasoning. Now, when you refer to principled reasoning, what principles really did you have in mind when you wrote that?

Ms. BAIRD. Well, in that article I was generally discussing the question of the extent to which the Federal Government could set standards for how State governments govern themselves, the wages they pay their employees, the work rules and the operations of State government themselves.

In the *Garcia* case, the Supreme Court basically said that States can take care of themselves in Congress, we don't need to protect them by saying a constitutional provision precludes the Federal Government from regulating those operations of the States. My argument was the States aren't represented in Congress, the people

of the States are, and the Federal Government can have an interest sometimes which conflicts with those of State governments.

My basic position on that is that we need lots of competing governments in this country to ensure that people's rights are attended to, that we want a system of checks and balances between the executive branch and Congress and the judicial branch and the Federal system, we want a system of checks and balances between the Federal and State system.

For example, in the last several years, when there was less anti-trust enforcement by the Federal Government, the States in many ways picked up the mantle and State attorneys general brought antitrust actions. If the States are unable to continue to function as vibrant, separate political entities, because the rules that govern them and the money that they have available to them is directed as the Federal Government wants it directed exclusively, or if we go too much in that direction, then we won't have this competing interest that I think is critical to preserve.

Senator HATCH. I was interested in some of your comments about the preservation of Federalism also in your Urban Lawyer article, because you expressed a strong commitment to the principles of Federalism and the preservation of, as I think you put it, a realm of independent State decisionmaking authority.

Ms. BAIRD. Right.

Senator HATCH. You state, for example, that the States play a critical role in "assuring independent critical counterpoints to national policy" in "facilitating experimentation" and in "preserving the dispersal of political power." Do these still remain your views?

Ms. BAIRD. Yes.

Senator HATCH. And how, as Attorney General, would you ensure that the role of the States would be respected?

Ms. BAIRD. Well, I think that I would have a strong relationship with the States in law enforcement, for example. I have already begun conversations with State attorneys enforcement entities, and I would like to begin conversations with State courts, because that is another place where I think we need to look hard to see how the Federal Government can strengthen the State institutions.

I would hope that my tenure would show a respectful partnership between these entities, because I do respect the role of State institutions. I don't think that all problems can be solved at the Federal level.

On the other hand, I also think that the Federal Government has a special responsibility to insure that the States don't in any way disadvantage those who are minorities within those populations.

To my mind, these are not inconsistent interests, that we should be able to have, as the Federal Government, a very strong relationship with States and local governments, to provide them funding in a way that furthers national policy, but furthers local policy, to support the objectives of State and local law enforcement officers, courts, attorneys general in a way that is very compatible with the Federal interests. Really, the whole will be better than the sum of its parts, because these institutions, if they fight with each other, will divert energies; if we work together, will be stronger and will be able to solve some of these problems.

Senator HATCH. Thank you. In your Urban Lawyer article, you express the view that Congress is ripe for a challenge that it has exceeded its authority to delegate by giving the executive branch legislative functions. Could you give us some examples of what you had in mind in making that particular statement? And how, as Attorney General, would you scale back executive branch lawmaking to conform to your understanding of the limited scope of Congress' delegable authority?

Ms. BAIRD. What I had in mind at that time was general legislation passed by Congress that would require the executive branch to write the rules to such extent that they were working in areas that Congress really hadn't grappled with or debated. I think it was a more acute problem, quite honestly, in an earlier period of time than it may be now, although I would need to look at this now. I am not as close to it as I might have been at that time.

What I would hope would be the approach in the Justice Department is to make clear, as we work with Congress on legislation, areas where we feel that Congress does need to express itself in order for the executive branch to carry out its will. The executive branch is intended to implement the laws, to enforce the laws, but not intended to start from five liens and figure out the 150 lines needed to articulate the policies.

So what I would hope we can do is to observe the developments and the relationship between this Congress and this administration and try to make sure that we get that right.

Senator HATCH. I notice my time is just about up, so I will relinquish.

The CHAIRMAN. The Senator from Illinois, Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

I can't help but be struck by the historic nature of this hearing, in that this is the first time this committee has had two women Senators and the first time this committee has had an opportunity to consider a woman nominee for the Office of Attorney General. So I think in that regard, Chairman Biden, I want to especially thank you for this opportunity to serve on the committee and for giving Senator Feinstein and I in the spirit a noncontroversial nomination to work with. Thank you very much. [Laughter.]

The CHAIRMAN. Believe me, Senator, I was prepared to do anything to help you get on this committee.

Senator MOSELEY-BRAUN. Thank you very much.

The controversies notwithstanding, Ms. Baird, there has been a lot of conversation about that today and you have answered those questions time and again, and I know there will be others. There are, however, a number or a range of issues that I think go to the heart of the work of the Department of Justice about which I have some concerns and I know others do, and questions ought to be raised so they can be answered for the record, and these are substantive legal issues, as opposed to particular issues going to the situation with your home or your neighborhood or your child care arrangements.

Specifically, I have some questions of you in the area of tort reform, protection of individual liberties, national security issues, environmental protection and environmental equity, fraud prosecu-

tions, and exercise of the right to choose. So I don't know how much time I am going to get to do this, but I would like to start, if it is all right, Mr. Chairman with the questions on tort reform.

In a speech you made last year, Ms. Baird, you praised Vice President Quayle for moving tort reform to a level of visibility and credibility that it really hasn't had for years. A good deal of attention has been given to that remark and to your involvement with the Vice President's working group on civil justice reform.

What were the specific recommendations that you made to the working group on tort reform?

Ms. BAIRD. I made two specific recommendations. The first was that they include in their report a recommendation to Congress that Congress create an office to evaluate the litigation impact of legislation, much as Congress has an office that evaluates the budgetary impact of legislation.

My notion there was that it would be useful for Congress to understand in creating rights what it needed to do to allow people to fulfill those rights. In other words, is there a need for new judges, is there a need for any process, what would be the litigation impact of passing legislation.

Now, obviously, much legislation would not need to go through this office, but my notion was that we shouldn't simply create rights, but find ways to make them real, what are the processes we need to include, or the resources we need to provide in order to—as companion legislation, if you will, to legislation that would create rights for people to go into court.

Something that I feel very strongly about is that we need to make access to our court system viable access. It doesn't do anybody any good to say you can pay \$150 and file a lawsuit, if that person can't get a lawyer or if the system is set up so that the discovery would kill him and they could never prove their case. And it seemed to me all these things are ones that ought to be considered by Congress and could be done easily through an office where people are used to looking at a piece of legislation and saying this is what the litigation impact would be and these are the ways that you can address or try to think about addressing and creating those rights.

The other recommendation that I made had to do with Superfund, where we, I think, are failing—and I say this in my personal capacity, my personal views, I haven't looked at this from the point of view of the Justice Department—but I think we are failing to use the moneys effectively to clean up environmental problems. We have created a litigation system, but the litigation system is not resulting in quick enough cleanup.

I was simply saying in my other comments to the Council on Competitiveness that maybe there ought to be a study of how to better channel the moneys being spent in environmental cleanup. Now, I never took a position which is an insurance industry position, as I understand it, that has to do with the liability system. My own personal views are that I haven't identified the liability system per se or making people liable a problem. It seems to me that people who cause environmental pollution should pay to clean it up.

What I was simply saying is shouldn't we look to see if there is a more efficient way to get the dollars spent, spent on cleanup, because right now very little money—and this is true in the Federal Government budget, as well as money spent by private companies—very little money has been spent on cleanup and a lot has been spent on litigation.

Senator MOSELEY-BRAUN. Did you make any proposals with regard to some of the specific legislative reforms that were included in the company for which you worked, Aetna's package of tort reform proposals?

Ms. BAIRD. No; actually, that package was written up for you after I was designated for this position, because there were people on the committee who were interested in finding out what Aetna's position had been. Most of these positions were developed before I was at Aetna, and I did not really get involved really with most of them and made no specific recommendations beyond the two I mentioned to the Council on Competitiveness in terms of substance.

Now, I did make a procedural recommendation to them as a followup to my appearance as a witness at their proceedings. I recommended to them that in implementing the report, before they took their report anywhere, they ought to broaden the constituencies that they were consulting, and I specifically told them in a letter that I sent to Solicitor General Starr, who is heading their working group, that they needed to bring in consumer activists and environmentalists and plaintiffs' trial lawyers, and I think I even made some specific suggestions about individuals that they might include, that they couldn't go forward with legislation and legislative recommendations to implement notions that they developed in their working group before they broadened the group of people who were involved in developing the proposals.

So I proposed a blue ribbon panel which would include this broad set of representation. I think I may have even said I don't even think you should put insurers on it. But I told them to broaden the group of people and have those people work in their own working groups and try to develop the particular ideas that they were working with as part of their commission.

I think that the notion they were trying to address of the impact of litigation was very valuable, and that is what I was quoting as lauding Vice President Quayle for. And one thing you would find about me, if I do become Attorney General, is I don't hesitate to say that I think somebody is doing a good thing if they are not of my party, or a bad thing if they are. Now, I am not going to necessarily make it a big public cause. This was a private speech. But I think the basic notion of addressing the state of litigation was an important one. I had made some recommendations on what they ought to do with it.

Senator MOSELEY-BRAUN. Trust me, Ms. Baird, there is no such thing as a private speech.

Ms. BAIRD. I have learned that.

Senator MOSELEY-BRAUN. I have some specific questions without reference to your previous pronouncements on the subject. There are, as you know, a number of specific issues floating around under the general rubric of tort reform, and rather than going back and

cross-referencing previous pronouncements that you have made on the subject, I would just ask you a specific question about your position on these various proposals, with your indulgence.

The collateral source rule, which, as you know, prohibits the introduction of evidence that you have received payment in a given situation from another source, what is your position on that?

Ms. BAIRD. I don't want to start this off on a note that sounds resistant. This isn't intended to be resistant, but I really have not developed a position on that and it is something that I would need to look at in the Justice Department.

Senator MOSELEY-BRAUN. The proposals for fee shifting, do you have a position on that?

Ms. BAIRD. Yes, I do not support proposals for fee shifting.

Senator MOSELEY-BRAUN. The comparative negligence suggestions, changing our system or moving our system more to the comparative negligence, the English system, have you taken a position on that?

Ms. BAIRD. I haven't, and let me say that, in this general area, I would suggest that I really need to spend a lot of time with the people in the Justice Department who have been thinking about this from the point of view of representing the people of the United States.

While I am very happy, of course, to tell you my personal views on issues where I have personal views, I do want to preface a discussion in the tort reform area. I think I would look forward to many long conversations with members of this committee and those in the Justice Department who have been thinking about these positions, before taking a position as Attorney General.

Senator MOSELEY-BRAUN. So you have not taken a position on those. There are several. The joint and several liability is an issue, pain and suffering as a part of damages is an issue, contingency fees, prejudgment interests, I mean all of those—

Ms. BAIRD. No; I haven't taken positions on any of these issues.

Senator MOSELEY-BRAUN. But it is likely that you will take a position at some point in that regard?

Ms. BAIRD. Yes, I would think so.

Senator MOSELEY-BRAUN. What is your leaning at this point, or do you have one?

Ms. BAIRD. I really don't have one. I mean I am not trying to avoid the question. I really have not spent enough time studying these issues. This was not an area of responsibility of mine at Aetna until the last few months, I was asked to take on the civil justice issues, and I can't tell you whether, even if I stayed at Aetna, in 6 months their positions might have been very different. I really have not studied them and would need to study them, as Attorney General.

Senator MOSELEY-BRAUN. Another area that is likely to be an area of major concern has to do with—and I am shifting gears from tort reform now to health—you wrote an article in 1992, last year perhaps, regarding health care, in which you took a position on health care reform that seems to be at odds with the President's proposals, President Clinton's proposals in health care. You essentially said that you did not embrace or support the proposals to have more intervention to set up a system of universal care or

something like that. Have you changed your position or are you interested in working toward health care reform consistent with the President's direction, or do you have a position on that?

Ms. BAIRD. I think President Clinton's health care proposals are very much on the mark, very strong. The speech to which you refer, I was actually on a panel with an advocate of the Canadian health care system, a nationalized health care system, not something that looks like what President Clinton is proposing. It was probably hard to tell that, if not impossible to tell that from the speech.

When I talked about national health care, I was talking about that kind of system of national health care, so I don't believe that, even as a lawyer for Aetna, I took a position that was fundamentally contrary to President Clinton's position. I would not, of course, be a lawyer for Aetna, as Attorney General, and would look at these issues as a lawyer for the people of the United States and for President Clinton.

Senator MOSELEY-BRAUN. Another area of concern has to do with the whole environmental protection issue, and you raised the question of Superfund and your activities with Vice President Quayle's commission. One of the concerns that has been brought to my attention, even as close to home as Altgeld Gardens on the south side of Chicago, has to do with the whole issue of what is called environmental equity, and I would like your views on the issue of environmental equity, what specific activities you see in terms of pursuing environmental protection issues generally, and specifically pursuing issues in which minority and poor communities are impacted unfairly by waste disposal practices.

Ms. BAIRD. I think this is a critical issue, and I am glad you raised it, because it doesn't get enough visibility. We often think of environmental protection as protecting the wide open spaces, but a lot of people can't even get to the wide open spaces, you not only have the fact that we are protecting areas which don't benefit everyone, but we are not using our resources adequately to also look at the problems of urban areas.

I live in the middle of a city, and one of the things that seems to me good that has happened is that many of the State laws have been changed to preclude the transfer of property without the cleanup of environmental contaminants, and that has been very important in urban areas.

For example, the Science Park Development Corp. that I talked about, which is a few blocks from my house and is a project I was deeply involved in when I first came to Connecticut, took over old gun factories and tried to restore them to bring business in there, particularly high-technology business, to employ the third- and fourth-generation unemployed, mostly black people in this community. It was one of the most depressed communities in New Haven and had been for generations.

One of the key issues is all the waste on that site, and there are people living in this area around Science Park who live around a manufacturing site that had not been cleaned up. Well, that didn't turn out to be a big problem, but it was very important in my mind that the law require that before the property could be transferred even to a nonprofit owner, that we test for environmental contami-

nants and that we get at the issue of whether there were things that needed to be cleaned up.

So the States have done some good work there, I think, and there may be some Federal laws that we ought to be looking at, too, to address the situation for those who live in urban areas, where you can intervene in the process like the States chose to do in the transfer of property and create some very vibrant environmental legislation.

Senator MOSELEY-BRAUN. I think it even goes one step further. There has been some research that has demonstrated that even in the area of prosecutions for environmental dumping and the like, the prosecutions in minority areas have been relatively few and far between than in others, and this area is one that I think is of particular concern, and I would very much like you to take a look at it in the capacity of Attorney General, as well as to take a look at some of the research in this area, because it is unfair to people who are helpless, who cannot do otherwise, that they become the repositories of everyone else dumping, and that is apparently what is going on. There has been very little or very lax enforcement of the laws in terms of fairness of treatment as between minority and poor areas, and I think in many instances it is an economic issue, as much as it is a race issue, that the enforcement does not seem to be as aggressively pursued in those areas as in others.

Ms. BAIRD. I would like to look at that and to work with you on it. It may be that it is sometimes harder to prove those cases, and so people go elsewhere, because with the intensity of activity, it may be hard to prove what has caused the problem. But I would very much like to work with you on that, because I think that this is an area where we really can make—the Government can make a statement to people in urban communities that we are trying to address their problems, that they are not being left out by the Government, and that aura, that atmosphere in mind is as important as every program you put in to help someone learn to read a book. So I think this could be a very important part of our efforts in dealing with the problems in urban communities and not unrelated to the issue we always come back to of crime.

Senator MOSELEY-BRAUN. In that regard—my time is up, but I am very encouraged by your emphasis on crime and protecting communities and protecting people in communities, because it really is holding us hostage, particularly in inner-city communities, and it is something about which I think that the Department of Justice really can play a very active role, both from Washington, as well as the local communities.

I come out of the U.S. attorneys office in Chicago, and I look very much forward to working with you and with that office in an effort to try to crack down on violent crime in urban communities.

Thank you.

Ms. BAIRD. Thank you.

Senator KENNEDY [presiding]. Senator Thurmond is recognized.

Senator THURMOND. Thank you, Mr. Chairman.

Ms. Baird, the position of Attorney General is one of great trust and responsibility. I believe all Americans look to the Attorney General to serve the Constitution and rule of law with the utmost professionalism and integrity. How would you approach and would

you ultimately defend a regulation adopted by an executive branch agency or department, if you believe the regulation was unconstitutional?

Ms. BAIRD. You know, Senator, I thought you were going to ask me what most people ask and consider to be the harder question: Would you defend an act of Congress if you thought it was unconstitutional? I was prepared for that one. [Laughter.]

On this one, it is to my mind an easier question, because I would hope that an agency wouldn't get to the point of promulgating a regulation that I thought was unconstitutional. I would hope that my Justice Department would intervene and advise them that it was unconstitutional and, therefore, they would not be allowed to promulgate that regulation.

The role of the Justice Department in counseling on the constitutionality of the actions of other executive branch agencies is to my mind a very, very fundamental responsibility. I was in the Office of Legal Counsel which had that responsibility when I was in the Justice Department, and I would hope it wouldn't get to that point. If they nevertheless did it, I don't think we would defend it and, therefore, the regulation would fall.

Senator THURMOND. Ms. Baird, do you believe that the line-item veto is constitutional, and would you approve legislation granting line-item veto either by statute or constitutional amendment?

Ms. BAIRD. Senator, I haven't studied that question yet and would want to do that. I know that it is an issue that will be of importance to consider, but I don't have a position on it.

Senator THURMOND. I believe President Clinton recommended that in his campaign and also in the book he wrote; is that correct?

Ms. BAIRD. Yes, he has been a supporter of the line-item veto. I don't know whether he would intend to propose one and if he was interested in proposing one, I know he would consult with me about the constitutionality of it before doing so.

Senator THURMOND. Ms. Baird, what is your opinion regarding the use of Executive privilege to withhold information from congressional inquiries?

Ms. BAIRD. I think that any privilege must be used carefully in order to preserve its credibility. I would like to see us as an administration try to have some general understandings about when Executive privilege will be used with respect to congressional requests for information in advance of problems. These things often tend to come up when a committee wants a document and the executive branch won't turn over the particular document, and I would like to see if we could come to some consensus.

It may not be possible, but I would like to see if, with the leadership of the House and the Senate, we could come to some consensus about when Executive privilege will be used and recognized, so that we don't fight this out when it looks like what we are fighting over is the issue contained in the document, as opposed to the principle of Executive privilege.

Senator THURMOND. Ms. Baird, given the size and the number of activities in which General Electric and Aetna are involved, what criteria will you use in determining whether to rescuse yourself from specific matters under consideration by the Department of Justice?

Ms. BAIRD. Senator Thurmond, I have indicated that I will divest myself of any interest in General Electric or Aetna as the first approach I will take to try to separate myself from any suggestion of influence there or action in their behalf.

I would be recused from any particular matter that involves General Electric or Aetna as a party. I would run through the Justice Department's Ethics Office any matter that would in any way have the potential of involving General Electric or Aetna, and that office could make a determination of whether I should recuse myself in some other matter.

The office also could choose—and I think it would have to be approved by the Deputy Attorney General or the Assistant Attorney General for the Office of Legal Counsel could approve my participation in certain matters, if there was some Aetna or General Electric implication.

Senator THURMOND. Ms. Baird, I believe you testified on Tuesday that the Peruvian couple hired in July 1990 to care for your son was referred to you by an agency, and that prior to hiring the couple you knew that the couple did not have the appropriate green card authorizing them to work in the United States. Is that correct?

Ms. BAIRD. Yes.

Senator THURMOND. And I believe as well you testified that you knew when you hired them that it was a violation of U.S. immigration laws, and that you gave too little emphasis to what you were told was a technical violation, and that you knew there was a process to disclose to the Labor Department and the INS prior to hiring this couple.

Ms. Baird, the Attorney General is the chief law enforcement officer of the Federal Government and represents the United States in legal matters and gives advice and opinions to the President and the heads of the executive departments. How can I be assured, based on your actions involving the violation of immigration laws, that you will render appropriate legal advice and not shade your legal opinion because something may be a technical violation?

Ms. BAIRD. Senator, you have my assurance and my whole career stands for my giving honorable and thorough legal advice. I did not in this context handle this myself, and I relied on the legal advice that I was getting otherwise, which legal advice was that this was a—that technically there were civil penalties available here, but that it wasn't viewed, as I understood it—my understanding of the legal advice coming to me secondhand was that it wasn't viewed as an enforcement matter by the agencies, that the INS did not enforce this law, and that there was a process that could be used to regularize it.

I believe that I gave too much emphasis in that circumstance to my personal situation and took too much comfort in the second half of the advice and didn't focus hard enough on the fact that there was a violation here and that that should have been enough for me to conclude not to do this.

I can assure you that in any professional capacity I have given tough advice when it has been tough to give the answer, when people haven't been happy to receive the advice; I have given careful

advice. And I can assure you that this incident in no way reflects on my ability to be Attorney General.

Senator THURMOND. I don't want to embarrass you, but I feel the need to answer these questions that I think from your standpoint that should be answered.

Ms. BAIRD. Fine.

Senator THURMOND. Ms. Baird, the Attorney General is responsible for the administration and enforcement of the Immigration and Naturalization Service, which is charged with preventing unlawful entry, employment, or receipt of benefits by those not entitled to them, and for apprehending and removing those aliens who enter or remain illegally in the United States.

I understand that the civil penalty imposed by the INS was for knowingly hiring the couple who did not have the appropriate work papers and for not filing the forms.

Ms. Baird, you testified in response to Chairman Biden that from the first day you employed this couple, you and your husband knew that the hiring was a violation of the Federal immigration law, and you commented earlier before the committee that:

This is a critical moment to restore public confidence in the Justice Department. I have valued that public trust since the first day I got out of school and learned that about the Justice Department.

Now, Ms. Baird, how do you explain your actions to all Americans who play by the rules, and how will your confirmation restore public trust in the Department of Justice?

Ms. BAIRD. Senator, I have said to all the Americans who have watched this hearing that I made a mistake, that what I did was wrong, and that no one else should do it. I think that this incident shows that the laws are applied evenly to people regardless of what position they are in. I have paid my penalty. I think I can very clearly say to the people of this country that I made a mistake and I have demonstrated a commitment now to law and that I would live by this commitment as Attorney General.

This was a situation where there was, indeed, a civil penalty available for something, but the circumstances made it, to my mind at that time, a confusing enough situation that I didn't look hard enough at the violation aspect of this. I think that the Government needs to speak clearly in its laws, and I would hope to be a force in ensuring that this happens.

Senator THURMOND. Ms. Baird, do you recall ever discussing with your husband the legality of hiring the immigrants prior to your hiring the couple?

Ms. BAIRD. My husband and I had assumed that one could not hire someone who didn't have papers, and, in fact, we had in our advertisement prior to finding this couple said that we wanted someone who was a U.S. citizen or green card only.

After we learned of this couple and my husband checked with lawyers, it seems to us that the enforcement agencies didn't view this violation as one for enforcement of the civil penalty, but rather there was a process we could use.

Now, that was a wrong judgment, and I apologize for it. It was a wrong judgment. I can't say strongly enough that no one else should do what I did. We did not do it because we were trying to set ourselves apart from those to whom the law applied. We under-

stood that the law was never enforced, and my understanding to this day is the penalty imposed on us is one of a very rare penalty applied in the region in which we live.

That doesn't excuse it. It doesn't change the circumstance. I am just trying to explain to you what our understanding was at the time.

Senator THURMOND. Ms. Baird, the couple you hired to care for your son began working for you and your husband in July 1990, I believe. In your opening statement, I believe you commented that:

Before hiring the couple, my husband consulted the immigration lawyers who informed him that the immigration laws have employer sanctions for hiring someone not authorized to work in the United States, but that the INS did not appear to view this as an enforcement matter and explained the process provided for in the law to sponsor domestic workers for permission to work in this country.

After hiring the couple, your husband, Professor Gewirtz, did not recontact your attorney, Mr. Tom Belote, I believe, about the status of the couple until April 1991, 9 months later.

Can you tell the committee about any discussions you had with your husband regarding obtaining the proper labor certification for the couple before your husband contacted Mr. Belote in April 1991?

Ms. BAIRD. Senator, my understanding is that my husband was talking to a number of lawyers from before the time we hired this couple and for the months thereafter. I also understand that his first extended conversation with Mr. Belote was earlier than April, but let me comment to answer your question specifically. I wasn't having conversations with my husband about this. I regret that, but I had an understanding with my husband that he was going to handle this and he was going to do it right and he was going to work with the lawyer. And I regret I wasn't having conversations with him about how he was doing that.

Senator THURMOND. I have a letter here received from Senator Nancy Kassebaum, Olympia J. Snowe, Member of Congress, Marge Roukema, Member of Congress, Jan Meyers, Member of Congress, Barbara F. Vucanovich, Member of Congress, and Nancy L. Johnson, Member of Congress, the second paragraph of which reads:

Given her sterling legal reputation, it is particularly troubling that Ms. Baird knowingly employed two illegal aliens and failed to pay their Social Security taxes. Moreover, we believe the seriousness of this matter is further compounded by the fact that Ms. Baird has been nominated to supervise an agency charged with enforcing the laws she chose to ignore. We believe this incident raises serious questions about whether Ms. Baird is the appropriate person to head the Department of Justice.

Simply put, illegal immigrants deprive legal immigrants and jobless Americans of employment. The Immigration Reform and Control Act of 1986 was landmark legislation aimed at stemming the flow of illegal aliens into this country. In order to encourage compliance, the bill liberalized procedures for legal immigrants from most third world countries. Furthermore, monetary fines and jail sentences were established for those who chose to ignore the law and hire an illegal alien.

The general public is well aware of the existence of these legal requirements. As you well know, immigration cases compose a major portion of the workload in our offices. Each day, persons who need to hire alien workers consult with our staffs to navigate the proper channels, secure appropriate paperwork, and obtain the necessary visas. While, admittedly, the system can take months, it is imperative that each of us follows the law.

It is reasonable to believe that employers throughout the United States will respect and obey our country's immigration laws when the person charged with enforcing those laws has knowingly violated them? Is it possible that by confirming Ms. Baird we will be sending a signal that noncompliance with immigration laws is not a serious matter? Are we creating a double standard when it comes to the

employment of illegal aliens—are we saying it is all right to hire aliens for domestic work but not all right to hire them for manufacturing or agricultural jobs? So far, we do not believe these questions have been satisfactorily answered in Ms. Baird's confirmation hearing.

Would you care to comment on that statement?

Ms. BAIRD. Senator, let me make this one general comment. I do not think that my confirmation sends a signal that the immigration laws are not important. I think my confirmation would send a signal that President Clinton, in nominating me and being aware of this situation, and the Senate, in confirming me and being aware of this situation, which I have openly brought to everyone from the very beginning, the statement would be that that, put in the context of my overall career and my potential to be a great Attorney General should not preclude me from holding that office.

Senator THURMOND. Ms. Baird, in your 1981 column giving advice to Attorney General William French Smith, you urge him and the new administration not to dismiss career lawyers that had been hired by the preceding administration. Recently there have been press speculation that you might clean out the career lawyers in the Solicitor General's Office, the Office of Legal Counsel, the Office of Policy Development, and the Office of Legislative Affairs.

Would you care to comment on this?

Ms. BAIRD. Yes, sir; I met with Attorney General Barr and asked him political appointees he felt I should keep in my aspiration to have a nonpartisan Justice Department. I think that reflects that I am not going to do a wholesale cleanout of people who are not political appointees but, rather, are now career service.

Senator THURMOND. This is the last question. Will you be choosing your own team, or will these decisions be made at the White House?

Ms. BAIRD. I intend to choose my own team.

Senator THURMOND. Thank you very much, Mr. Chairman. I believe my time is up. I ask unanimous consent this letter from Senator Kassebaum and others follow my statement in the record.

The CHAIRMAN. Without objection.

[The letter follows:]

U.S. SENATE,
Washington, DC, January 21, 1993.

Hon. STROM THURMOND,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR STROM: We are writing to express our deep concerns regarding the pending confirmation of attorney general-designate Zoe Baird. There is no question that Ms. Baird has the professional credentials necessary to be an effective attorney general. From the testimony of colleagues and the statements of those who have worked with her, it appears that Ms. Baird is an exceptional attorney.

Given her sterling legal reputation, it is particularly troubling that Ms. Baird knowingly employed two illegal aliens and failed to pay their Social Security taxes. Moreover, we believe the seriousness of this matter is further compounded by the fact that Ms. Baird has been nominated to supervise an agency charged with enforcing the laws she chose to ignore. We believe this incident raises serious questions about whether Ms. Baird is the appropriate person to head the Department of Justice.

Simply put, illegal immigrants deprive legal immigrants and jobless Americans of employment. The Immigration Reform and Control Act of 1986 was landmark legislation aimed at stemming the flow of illegal aliens into this country. In order to encourage compliance, the bill liberalized procedures for legal immigrants from most

third world countries. Furthermore, monetary fines and jail sentences were established for those who chose to ignore the law and hire an illegal alien.

The general public is well aware of the existence of these legal requirements. As you well know, immigration cases compose a major portion of the workload in our offices. Each day, persons who need to hire alien workers consult with our staffs to navigate the proper channels, secure appropriate paperwork, and obtain the necessary visas. While, admittedly, the system can take months, it is imperative that each of us follows the law.

Is it reasonable to believe that employers throughout the United States will respect and obey our country's immigration laws when the person charged with enforcing those laws has knowingly violated them? Is it possible that by confirming Ms. Baird we will be sending a signal that noncompliance with immigration laws is not a serious matter? Are we creating a double standard when it comes to the employment of illegal aliens—are we saying it is all right to hire aliens for domestic work but not all right to hire them for manufacturing or agricultural jobs? So far, we do not believe these questions have been satisfactorily answered in Ms. Baird's confirmation hearing.

Sincerely,

NANCY LANDON KASSEBAUM,
U.S. Senator.

HELEN DELICH BENTLEY,
Member of Congress.

OLYMPIA J. SNOWE,
Member of Congress.

MARGE ROUKEMA,
Member of Congress.

JAN MEYERS,
Member of Congress.

BARBARA F. VUCANOVICH,
Member of Congress.

NANCY L. JOHNSON,
Member of Congress.

The CHAIRMAN. I would like for the record to point out what everyone knows but reiterate that you have been forthright in telling us of your circumstance relating to the undocumented workers; it is a civil penalty, not a criminal penalty; that the law is, in fact, not applied evenly. It was unevenly applied, although rightfully applied, to you; mostly not applied to other people as opposed to the other way around; and that—and I will be very blunt with you—having been a single parent raising two children after my wife and daughter's deaths, I know from at least my experience that when I used to ride down on the train to work, I had two yellow pads. On one yellow pad, I had all the things that I had to remind myself to do in my responsibilities as a Senator. On the other yellow pad, I had things like make sure there is someone there at 7 o'clock if we go late, did I make sure we have the Pampers, are we in a position to make sure that we set up to go to see "The Wizard of Oz," et cetera. And that is the way it works.

Ms. BAIRD. It sounds very familiar.

The CHAIRMAN. Quite frankly, I think what you did, as I told you from the beginning, bothers me a great deal. But I also don't want to blow it out of proportion from just my perspective, no one else's; that is, to be very blunt about it, and we are going to get a chance to hear from your husband because the request has been formally made members of the minority and others for him to testify.

Quite frankly, although not excusable, it seems to me that it is explainable how, in fact, you got yourself into this position. And I want to just say publicly I admire the fact that from the beginning with me when I told you on January 5 when we first met that I thought this was a big problem, you were direct with me. You were

direct with me about it, and you never made any excuses about what has happened. But I wouldn't be too much of a martyr on this either. The fact is you did what you did. It was wrong, but it is a civil violation. It is a violation that took place in the context of a woman in her midthirties taking a job that most men don't get, if they ever get, until they are in their midsixties or midfifties, and with an 8-month-old baby and with—and I don't mean to cast aspersions, but with a very qualified husband who is a leading constitutional lawyer in America. And maybe we are all absent-minded professors. That used to be the—but, clearly, someone was, at a minimum, absent-minded on your watch.

So, with that, why don't I——

Senator COHEN. Could I inquire? Is that the chairman's third round?

The CHAIRMAN. That is the chairman's third round. [Laughter.]

What the Senator from the Armed Services Committee, now on this committee, doesn't understand is that I am not Sam Nunn. [Laughter.]

Senator COHEN. I do understand that.

The CHAIRMAN. With that, we will recess to give you a break for 10 minutes.

[Recess.]

The CHAIRMAN. The hearing will please come to order. Welcome back, Ms. Baird.

One of the things that our joint staffs and Senator Hatch and I have been doing is trying to assess realistically the timeframe here so we allow everybody to make their plans.

Contrary to my desires and hopes, we are obviously not going to finish tonight. What I would like to do, Ms. Baird, if possible, is finish with your testimony tonight so that we get through all the questions individual members have of you. We will be calling tomorrow to testify your husband and possibly other witnesses. The Senators have made specific requests relative to specific additional witnesses that are not on the list to testify. And we have the list of the police agencies who are here to testify on your behalf, and others, and one opposition panel or person. So everyone can make their plans accordingly.

I would like to ask the staff to survey each side here to see realistically how many more questioners we have on a second round to get a sense of how much longer we are likely to be. No one is held to any absolute timeframe because there may be questions generated by questions asked by other people. But do we have any general sense of that?

Senator HATCH. Mr. Chairman, I checked with everybody except Senator Specter, who is not here, and with some reservation, I think everybody is going to try and make this the last round. But there may be a few questions after that. I think I have stated that pretty fairly.

The CHAIRMAN. So everyone probably has another round they have an interest in. That would be another couple hours, roughly, if everyone does that. And assuming everyone asks all 15 minutes of a second round, that would take us to the 6:15, 6:30 area.

We will not go beyond that time unless we are within minutes or one or two persons finishing it. So, again, all you can do in this

situation is express a hope. My hope is that we can finish with your testimony before the committee, Ms. Baird, sometime early evening, maybe as early as 6 o'clock, hopefully no later than 7 o'clock.

We will take a break between now and then so you don't have to be sitting here straight through for the next 2½ hours. But having said that, why don't we now proceed to—and I am embarrassed to say I forget who is next. Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman.

During the campaign, President Clinton proposed that the Federal Government assist State and local governments in putting 100,000 new police officers on the streets. He also discussed the importance of providing college scholarships to young people in exchange for a period of national service. Fortunately, the two goals can be achieved in a single bold stroke: establishing a Federal police corps program.

The police corps concept is really modeled after successful public service scholarship programs like the National Health Service Corps. An applicant would receive Federal loans to attend college in exchange for a pledge to spend 4 years as a police officer after graduation. The plan would expand educational opportunities for disadvantaged kids, also send thousands of highly qualified, well-trained young men and women into the ranks of local police departments that are currently spread too thin.

Both the Senate and the House voted for a police corps last year, but it became a victim of the anti-Brady bill filibuster.

During the second Presidential debate last fall, President Clinton strongly endorsed the concept of a police corps. Can you give us some idea of how fast the administration hopes to move on that proposal, and would you make that a top priority were you to be confirmed as the Attorney General?

Ms. BAIRD. We would hope to have a police corps and to move that forward very quickly. The idea, as you know, is to provide scholarship and 4 years of service for those who graduate from college as part of the police corps. I think we need to work with local police organizations to figure out how to do this through this legislation most effectively to have these police supplement their resources.

Some people have said about the police corps, well, gee, you only get them for 4 years, and isn't this a lot of resources spent on training police who aren't going to stay with the job. But, in fact, the turnover rate in police departments is such that if we can get them for 4 years, we are actually exceeding the average, and we will start some college graduates off on the path of law enforcement, which I hope that they would choose to stay with.

So it is a proposal that is important to us. We need to work with the local police community to develop the proposal most effectively. But I would hope that the police corps would have the success of the ROTC in producing people like Colin Powell to be leaders of the Nation's police forces as well as the 4-year commitment.

Senator KENNEDY. And we have found in the National Health Service Corps that a number of the people that serve, particularly in underserved areas, welcome that opportunity and remain to

serve in those areas even after their obligations are completed. We would certainly be hopeful of that in terms of a police corps.

On a different issue, the Attorney General you have the opportunity to lead the fight on Federal gun control legislation. For 12 years we have had a Justice Department afraid to take on the NRA, even as children are dying in the streets of our cities; that must change.

In my opening remarks on Tuesday, I briefly mentioned the tragic incident that took place in Massachusetts last month. On December 14, an emotionally disturbed college student walked into a sporting goods store in Pittsfield, MA, and legally purchased an SKS assault rifle, the next day he used the gun to kill two people and wound four others at Simon's Rock College in Great Barrington.

We came close to passing the Brady bill last year. It was beaten by an NRA-inspired filibuster in the closing days of the Congress. But even the Brady bill would not prohibit the same-day purchase of an SKS assault rifle. Brady would create a national waiting period for handguns, but not for assault weapons.

In my view, highly lethal semiautomatic weapons like the SKS should either be banned outright or at least subject to the Brady bill for a waiting period. A waiting period would at least give law enforcement agencies a chance to conduct a criminal records search.

If the effort to ban assault weapons is unsuccessful, will you and the President give consideration to expanding the Brady bill to cover assault weapons?

Ms. BAIRD. We certainly would give consideration to that, but let me tell you, Senator, I am not going to give up easily on the notion of getting a ban on semiautomatic assault weapons. I think we need to push hard to try to do that, because as I said earlier in these hearings, Senator Feinstein gave a most vivid example of how the police departments can be outgunned by criminals on the streets. And we have got to take these guns out of their hands.

Senator KENNEDY. Well, speaking as someone who has spent a good deal of time dealing with this issue in the U.S. Senate, along with my colleagues, Senator Metzenbaum and a handful of others, let me say that you are the first nominee to be the Attorney General who has had the courage to take this position. And I think it is an enormously important message, you know, to families, not only in the inner cities but in many areas across the country.

It is an interesting fact that about a third of all the automatic weapons that are being used by the drug cartels in Colombia and Peru are manufactured in the United States. So they are not only a threat to the livelihood and the well-being of families here, but we are exporting them, and they are being used to gun down citizens in other parts of the world. And I must say we have had a lot of equivocation, a lot of nice words from previous nominees, but in my time I have not heard a nominee who has been willing to take that position, which I think means so much to millions of families across this country.

On another area, I understand that you testified earlier today in response to a question on tort reform that you oppose caps on punitive damages because such caps hurt the people who are injured

the most. I have reintroduced today the Equal Remedies Act, a bill that removes the caps on compensatory and punitive damages that women and the disabled can recover in employment discrimination cases. There are no such caps in cases brought by racial and ethnic minorities. Therefore, if you are black and you bring those cases and you get a judgment, you can recover unlimited damages. But if you are white or you are disabled, you can't, because of the series of caps in terms of the size of the businesses.

Therefore, you are saying, effectively, with the civil rights bill that we passed last year that women in this society and disabled in this society are second-class citizens because they have second-class remedies. And I am just wondering whether you support the removing of the caps on damages in employment discrimination cases brought by women and the disabled. Will you work with us to secure enactment of the equal remedies bill?

Ms. BAIRD. I do support the Equal Remedies Act and would work vigorously to help achieve that. I think those caps should not be there.

Senator KENNEDY. Well, again, I want to express appreciation for that response, because that is, I think, one of the very important issues regarding equality of remedies for millions of fellow citizens, for women and the disabled.

You stated on Tuesday that you believe in a woman's constitutional right to privacy and consider yourself prochoice. Today, Senator Mitchell, I, and a number of other Senators are introducing the Freedom of Choice Act, a bill to restore and codify the principles of *Roe v. Wade*. President Clinton has stated that he supports the Freedom of Choice Act and will fight for its passage in order to secure the right to choose as a matter of Federal law.

Can we count on you to work with us to see that the Freedom of Choice Act is enacted early in this Congress?

Ms. BAIRD. Yes, Senator. I think it is very important that we give the people in this country the confidence that those provisions are codified in Federal law so that they don't need to worry about what might happen should there be a change in Supreme Court inclination.

I think that we should be able to do that and would look forward to working with you for that legislation.

Senator KENNEDY. Have you half a chance to study the legislation, the Mitchell bill from last year?

Ms. BAIRD. No; I need to look at the legislation closely.

Senator KENNEDY. But your position is in support of the legislation, to attempt to incorporate into legislation the positions that were reached by the Supreme Court in the *Roe* case?

Ms. BAIRD. Yes, that's right.

Senator KENNEDY. That is very constructive and helpful. In the emphasis of time, I will just move into one other area.

Ms. BAIRD. OK.

Senator KENNEDY. This is on the voting rights issue. In our democracy, the right to vote is the most fundamental right of all. We have made great strides over the past quarter century in protecting the right to vote, but more remains to be done.

I can remember in the early 1980's, when we had an Attorney General nominee that wouldn't give us a straight position about ex-

tending the Voting Rights Act, and the difficulty that we had in fashioning and shaping that legislation, because of that reluctance and resistance.

On Wednesday, the New York Times reported that the Solicitor General overruled the positions taken by the Civil Rights Division in two voting rights cases. In one, the Division had determined that the Voting Rights Act required that two majority black congressional districts be created in Alabama. The district Court rejected that view, and the Solicitor General overruled the Division's position and filed a brief last week urging that the district court's opinion be affirmed.

In the other, the Division had objected to the county government of a county in Georgia under which one county commissioner elected at-large exercised all executive and legislative power in a county with a 22-percent black population. The Solicitor General concluded that blacks had no legal basis to challenge the form of government.

If you are confirmed, will you review these cases to determine whether the Civil Rights Division's position should be adopted by the United States?

Ms. BAIRD. I would review this. The Voting Rights Act has had a tremendous benefit to people in this country and we need to look hard at the scope of that act. I need to study the issue of its application in these circumstances, but I think that it is an area that we need to work together on to try to assure that the Voting Rights Act is meaningful where it ought to be. But I can commit to you to study the issue.

I understand the postelection changes in rules can have a very significant impact on the meaningfulness of the election review that goes on the meaningfulness of the election review that goes on under the Voting Right Act, but would need to get closer to it before I could take a position.

Senator KENNEDY. Just on a related point, last year, in the *Presley* decision, the Supreme Court ruled that the Voting Rights Act did not forbid a board of county commissioners from taking authority away from individual county commissioners after a black was elected for the first time. The decision provides a road map by which governing bodies can evade the Voting Rights Act by shifting authority away from black elected officials.

I understand that since the decision, the department has received complaints that least two jurisdictions have taken action to reduce the authority of newly elected black officials. In one of these cases, a county commissioner in Tennessee repealed a rule requiring unanimous approval of county redistricting plans when a black commissioner was elected.

The Bush Justice Department had supported the black elected official's position in the Supreme Court. Last year, Senator Danforth and I sought to work with the administration and draft legislation to outlaw this practice, but our efforts were unsuccessful.

Overruling the *Presley* decision and closing the loophole in the Voting Rights Act which it created would demonstrated the Nation's continuing resolve to combat race discrimination in all of its many forms. Will you work with Senator Danforth and I to fashion legislation to overrule that decision?

Ms. BAIRD. I don't at this point feel able to take a position specifically on whether the administration should look to overrule the *Presley* decision. I do understand the concerns there, again harking back to my earlier comment that the postelection change in rules can make the significance of the elections review less meaningful.

I think, though, that you would find in this administration and in a Justice Department led by me very sensitive and vigorous enforcement of civil rights laws and particularly in the area of voting rights and housing, as well as employment, areas that I think we need to reenergize and I would want to work very carefully with you on that.

Senator KENNEDY. Well, in the *Presley* case, I hope you might be able to take a look at it. Effectively, what they did was disenfranchise after minorities were able to get elected to county positions that had control over various county matters that had a very, very important impact on the lives of families in that community.

They effectively circumvented the election by moving and changing the authority from the commissioners to other officials who were white and effectively undermined the significance and the importance of voting by those local officials, and certainly circumscribed both the purpose and the intent of the Voting Rights Act, and it is an area that we would hope to be able to work with the administration on.

Ms. BAIRD. Thank you.

Thank you very much.

Senator KENNEDY. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Ms. Baird, let me come back to a point I was making Tuesday about the importance of supporting the Immigration Service with adequate resources and attention from your office, if you were to attain it.

Senator DeConcini has spoken of that, and Senator Kennedy. There are many of us who have watched through the years as the funding for the INS has been totally inadequate. You have indicated an interest in seeing that that changes.

Since those questions have been asked through the years, I know you are aware that Senator Kennedy and I were involved in another massive change in the immigrations laws with legal immigration in 1990, together with IRCA, the Illegal Immigration Reform Act of 1986, of which Senator Kennedy was not too vocal a supporter, but not exactly a detractor, either. He has serious reservations about some of that. Nevertheless, we did work together and we have for 14 years on this issue, including time on the Select Commission on Immigration.

So it is a very deeply held thing with me with regard to the issue. We have a million immigrants entering this country a year, a million coming in, 700,000 legal immigrants. I should have added the term immigrant and refugees, and they are totally different. People don't understand that. You can read a newspaper account of refugee flow and suddenly they are using the word "immigrant," instead of "refugee." They are totally different.

Refugees are persons fleeing persecution based on race, religion, national origin or membership in a social or political organization. Immigrants are people that do not have those pressures to leave.

Some don't like their country. Some don't like the government of their country. Some don't like the draft. But they are not refugees and, boy, that is a tough story to tell. You can't hear it out in the land.

Anyway, we have more than 100,000 refugees and asylees, and the difference between a refugee and an asylee is very simple. One is out of his or her own country and one is here. There are hundreds of thousands of undocumented migrants, and the Immigration Service has to try to deal with all of them, legal and illegal.

One of the reasons that your attorney may have told you that the employer sanctions law was not enforced in Connecticut in the case of domestic employees was because probably he knew that there are effectively only 4 INS officers, 12 investigators who allow one-third of their time to employer sanctions enforcement available. That is all there are available for the enforcement of the employer sanctions law in Connecticut.

The Immigration Service takes the reasonable position that they will use their very limited resources to enforce the law against the larger employers, the old "more bang for the buck" approach. The Immigration Service needs good managers, and Attorney General Barr has done much to address that serious problem. They need adequate funding, which it has never received during my time in the Senate. And Chairman Kennedy and I have raised this issue with every Attorney General nominee that has come before us, and we are always assured they will take enforcement of the immigration laws into serious status, they will take it seriously as they do all other Federal laws.

Again, I want to have you respond. I want your assurance that you will give special attention to the funding and support of the Immigration and Naturalization Service, and I emphasize the word "special." I believe the lack of attention this agency has received in the past entitles it to a very heightened attention, and I ask you whether you can give that heightened and special attention when it comes to resource allocation in your office.

Ms. BAIRD. Senator, I think I should give heightened and special attention to the Immigration Service in a couple of respects. First is I think that it is deserving of some of the best managers I can attract into government. As I understand the issues so far—and I would look forward to talking with you more about what you see as the limitations in that service's ability to perform its duties.

But as I have talked to members of this committee and as I have talked to those who have served before me as Attorney General, it seems to me that you are absolutely right in saying that it hasn't gotten adequate attention. I think I mentioned that Judge Bell told me that the one thing he most regrets in his tenure as Attorney General was that he didn't provide enough attention to strengthening the Immigration and Naturalization Service.

In addition, in terms of resources, I think we need to look hard to, through good management, get the resources that are spent by that service used effectively and wisely, and also make sure that the resources are in the right place and that we do put adequate emphasis on the Immigration Service.

Senator SIMPSON. I thank you for that. That is helpful, because I firmly believe that we can continue and will be able to continue

a very generous legal immigration and refugee policy in the United States, only if the American people believe that we are doing something about illegal immigration and doing it honestly and humanely. And there are very few ways to do it humanely.

I have been through this exercise for years. You will find the groups, as we call them or I call them, and they will say we don't want employer sanctions, it is discriminatory, go back to border enforcement, go back to enforcing existing laws, and they don't want that, either, really. They don't want anything.

And I don't believe many people in America want an open border, so you can just continue to exploit persons in the United States. So I have been through all that exercise, don't do employer sanctions, they are discriminatory, just give us enforcement of existing laws and these other things, and on and on. They don't want that, either, but it sounds good, it looks like an option. It is not.

So the most important tool we have against illegal immigration is employer sanctions, which were started by Peter Rodino back in 1971, and the first bill in the House voted on by a remarkable array of Democrats, Republicans, blacks, and Hispanics. But in the intervening years, suddenly it had a racist tinge to it. It is not, because it applies to everybody, people who "look foreign" and bald Anglos like me.

But where the effective enforcement of employer sanctions broke down is the employer's ability to verify a person's eligibility to work. That is where it broke down, because the Achilles heel of immigration reform and employer sanctions is simply the easy availability of fraudulent documents. Producing them has become a cottage industry. And illegal aliens and others ineligible to work use fraudulent documents to facially satisfy the requirements of the law, and the reason we can't do something about it is because someone is always talking about a national ID card and other ugly things that I have no wish to even be involved with.

So we have often talked about a card or a document or a revised social security card, which would not be carried on the person, would not be used for law enforcement, would be presented only at the time of new hire and at no other time, and we still can't get that done. My hunch is we are getting closer to that. There are those of us here on this panel on both sides of the aisle who are ready to pursue that.

So those are the things, and billions of dollars go out of our Treasury to people who are undocumented, which irritates the people who are struggling. As we know in this campaign, there are people who are struggling. That was vividly portrayed.

So if you were confirmed, would you actively and aggressively work toward a secure method of verification of a job applicant, so that we can see that employer sanctions do work? They are the most humane way of working that particular issue.

Ms. BAIRD. Senator, as I listen to you, I say to myself, if I were sitting in a major company in this country, I would be able to solve that problem. There is no reason why the Federal Government can't solve it.

Yes; the Federal Government has some interests it takes into account that companies don't have to take into account, but there ought to be a way respectful of all the civil rights implications and

the sensitivities to intrusions on individuals. There ought to be a way to deal with this issue and to solve the problem, and it may be the ID card or there may be some other solution. I am obviously not close enough to it.

I haven't heard the vibrant debate that I know has taken place, but I think that one thing that has been central cored in my success has been to listen to debates like that and to find a solution for people, that they can coalesce around, and it seems to me this is a problem which should be able to be solved and should not be hard to solve.

Senator SIMPSON. Then you would work with those of us who have been working on it for many years?

Ms. BAIRD. It would be a privilege, absolutely.

Senator SIMPSON. Today there is a very serious problem occurring at many of our international airports. Thousands of aliens—now hear this one, this is fascinating—they arrive without any travel documents or visas, many then make an immediate frivolous asylum claim once they get to the point of destination in the United States, and then never show up for the asylum hearings, and they know they needn't, because nobody has got the law enforcement mechanism to enforce it.

We have many occasions seen where people get on the plane overseas and actually eat the documents, and then when they come off the plane, they say I have no documentation, I am seeking asylum. They got on with documentation, they have destroyed it, and that is happening in a heavy way in JFK and other airports. In short, those making those frivolous asylum claims are taking advantage of our very generous asylum laws in the United States.

We put together some legislation. Congressman Schumer is working on that with me. I wouldn't speak for him. We work together on many issues. We think it is very necessary to have a procedure of summary exclusion for those people, and I introduced that legislation. You don't know what that is and I am not even trying to put that upon you, but I think you would realize that that is a serious issue, if people are doing that, and there is only one way to address it. You can't let them go into the regular procedures, where they just use up their time and go on out into the society and never show up for the hearing.

So would you be willing to address that problem seriously, if you are confirmed?

Ms. BAIRD. It is certainly something that I would want to look at. It seems like a situation obviously in need of being rectified in a way that, of course, doesn't weed out people with legitimate asylum concerns, as I know you wouldn't want to do, so I would look forward to working with you on that.

Senator SIMPSON. Indeed, legitimate asylum concerns are very important in a country such as ours. Again, look at what has happened in Germany, with a legitimate and generous asylum policy, they slowly were overwhelmed. Either we would be serious and honest with it, or we have some serious problems to come. There is no question in my mind about that.

I have other questions, but I want to discuss what has become a very troubling thing for me. It is very troubling. When I spoke with you on the phone, when first we spoke, I very much obviously

wanted to support you. Based on what you told me about having advice of counsel, I felt that if you had acted on the basis of bad legal advice, that would be a very different matter. But you acted in the face of good legal advice, which was that the hiring was a violation of the Federal immigration law.

You have been very candid, very honest, very frank, and it is with—I spent 8 years of my life on this stuff. It is heavy stuff. It is filled with emotion, fear, guilt and racism, and I have been through it all. Bigotry. It is out there, and yet we must get a handle on it, or our country will suffer greatly.

There are those who really do want to militarize the border. That is not me. Some say we should give local law enforcement people the opportunity to enforce the Federal laws, and that is not me, either. I have been through all of this stuff.

I also was the one who personally insisted that this must apply to every employer, and there were so many saying let's not apply it to people who employ only one or only two, and I knew what that hook was. That's the people who come and give you the lectures and then they hire a person who is often exploited. I am not suggesting in any way that is you.

You got a lot of bum advice from an employment agency which was violating the law when they did it. They ought to be out of business. If you know their name, I would like to have it. You needn't put it to the public. Because they gave you terrible advice. They were trafficking in illegal persons, and they knew it.

I remember, too, that in my own life, the Wall Street Journal and other intrepid members of the fourth estate looked all over me to see whether I hired illegal undocumented persons while I was doing this legislation. My wife Ann and I do not have domestic help, so they were very disappointed, as they hacked around in that. They were personally hoping and praying that they could find that with me and with Ron Mazzoli and with Peter Rodino and with Senator Kennedy. It is interesting. Norman Braman was brought down on this issue, that he had done this in the previous administration.

So when first we spoke, as I say, I wanted so to do that, but I must say that because of my investment of 8 years of my legislative life and other parts of my life in this issue, that to see that you have knowingly violated that law, which was a tremendous effort and exercise in trying to do something different than watching 3 to 5 to 20 million people out in our land who did not have the same rights as the rest of us, and giving them amnesty, 3 million of them we gave amnesty to, an extraordinary generosity.

So with the fact of that work product and the work with it, and I admire you greatly as a person and as a lawyer, I am not able and will not be unable to support your nomination, simply because of that singular fact. It is a very tough, wrenching decision for me and has nothing to do with anything but a great investment of a lot of time and energy into a piece of legislation which we either have something like this or we will go back to where we were before, where it is legal to hire an illegal, but it is illegal for the illegal to work, and that is not America.

I think you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Did you want to comment?

Ms. BAIRD. If I may just respond for a minute, Senator. I appreciate your candor and I obviously respect the consideration that you have given.

I would hope that if I am confirmed as Attorney General, that you will find yourself in the position that those who voted against Judge Bell were in, where at the end of his tenure they each to a person went to the floor and said that he had been one of the great Attorney Generals the country had seen.

Senator SIMPSON. Ms. Baird, I pledge that to you. I am not a scorekeeper. I don't keep score. I just act and sometimes it is to my detriment and sometimes not. But I assure you that I would look forward very much to working with you, if you are confirmed by the U.S. Senate, in every level, in every possibility and engage myself fully anew, just as if it were fresh, I promise.

The CHAIRMAN. You can take his word on that.

Senator Metzenbaum.

Senator METZENBAUM. Ms. Baird, Senators Kohl and Moseley-Braun discussed tort reform with you. You expressed concern that poor middle-class people often can't afford to vindicate their rights in court. I share your concern about those problems.

However, I have seen proposals developed under the guise of promoting access to the courts which actually make it much harder for people to vindicate their rights. For example, in last year's product liability legislation, there were provisions designed to encourage arbitration of disputes and speedy settlements. These provisions were touted as being proconsumer, they were going to be great for the average American.

But they actually would have punished some injured victims who wanted to exercise their right to a jury trial. Under that legislation, an injured victim who loses at trial could be ordered to pay some or all of a manufacturer's legal fees, if he or she rejected a product maker's settlement offer or refused to arbitrate the dispute. Do you think that adoption of this type of provision would help or hurt injured victims?

Ms. BAIRD. I think this fee shifting notion, the English rule as it is called, is a real mistake and I would not support it. It far exceeds what the system ought to impose on people, in my judgment.

Senator METZENBAUM. Thank you.

On Tuesday, Senator Grassley asked you whether you shared the view of GE and other defense contractors that whistleblowers should be required to disclose their allegations of fraud and abuse to their employers before being allowed to file qui tam suits under the False Claims Act. You indicated you had not given the matter a great deal of thought and had not taken a position on the issue.

I then asked you to reflect further on this issue. Let me ask you again: Do you believe it would be a good idea to require whistleblowers to disclose their allegations of fraud and misconduct to the company they work for prior to being allowed to file a qui tam action under the False Claims Act?

Ms. BAIRD. No, I don't. I have thought about the issue more and it seems to me that it would be a mistake to require employees to go to their employer before they have the rights everyone else does now to bring the qui tam action.

It might well be that we would want to find ways to encourage people to go to their employers, if the employers have systems set up where they are going to properly handle these reports of violations and correct them, because obviously companies are in a position to correct the violations and the courts are not.

So it seems to me not incompatible to encourage people to go to their employer, but that to my mind is through encouraging companies to step up to their responsibility of providing channels for reports of violations without any harm or discrimination to take place against the employee who has the courage to speak up. I think we need to encourage both. We need to encourage corrective actions within the company and processes for reporting within companies and the qui tam route for those appropriate circumstances. So my short answer to your question is no.

Senator METZENBAUM. Thank you.

Some industries are calling for relaxation of our Nation's anti-trust laws. They claim that weaker antitrust laws will make U.S. companies more competitive. In fact, I came to the conclusion last year, during the last session, that anything and everything which companies could claim would make them more competitive, they wanted to change the laws of this country.

They claim that it would better enable the military and the health care industry to down-size. Frankly, I just believe they are flat wrong. I know that you are familiar with the defense industry through your work at GE. The Defense Department may pressure you to relax your antitrust review of defense industry mergers.

Now, I am particularly concerned about this subject, because of a recent letter to the FTC from Secretary of Defense Les Aspin, in which he raised questions about the FTC's investigation of a merger between Olin Corp. and Aleant Tech Systems, the only two U.S. companies that make a particular type of tank ammunition.

In his letter, Mr. Aspin, for whom I have great regard and respect, but disagreement in connection with this matter, stated that, "Normal standards of review for mergers may not be applicable in the defense industry," and went on to say, "Antitrust goals and defense goals may not be compatible."

Fortunately, the FTC did not alter its antitrust standards when it reviewed the Olin-Aleant merger. Instead, the FTC moved to block the deal, when it found evidence that the merger would have cost American taxpayers an additional \$42 to \$115 million.

There are a number of large defense industry mergers under consideration. Will the Justice Department under your leadership follow the example set by the FTC and apply tough antitrust standards to defense industry mergers?

Ms. BAIRD. I think we need to have a very clear sense of what the antitrust guidelines are that we want to apply to defense industry mergers. I don't think that we should have broad exceptions to the application of antitrust standards, but if there are other countervailing interests in the defense area—for example, if a combination of two now weakened defense entities will create a stronger defense industrial base for the country, I think we should look hard at how we evaluate that, not so that we give an exemption from the antitrust laws, but so that we have criteria for evaluating the public interest in seeing the merger.

I don't think that we should——

Senator METZENBAUM. If they are two weak companies, that probably would not provide an antitrust problem for them to merge. It is when they are two strong companies or one strong company and one weak company that you get the greatest amount of problems.

Ms. BAIRD. Right; that is right. What I was really referring to was the declining base for the defense industry, and if the companies are weakening, there may be some interest in seeing the antitrust laws applied differently than they would to companies in industries that had stronger potential.

Senator METZENBAUM. That concerns me because certainly there is a declining demand for defense armaments, for defense industry products. Therefore, if I follow your answer, it would indicate that maybe we should start to set a new policy as suggested by Les Aspin in order to permit defense industries to merge. And that is a matter for——

Ms. BAIRD. No; I wasn't suggesting that we should start a new policy. What I was saying was I think the antitrust laws should apply in that circumstance as they do elsewhere. All I was saying was that the Government may want to factor in an interest in the direction that the defense base takes. But what I was saying was I think that this is something that we ought to look at. I do not think the antitrust laws should be applied differently if the—you know, the antitrust laws have a standard of competition that they are trying to achieve, and it seems to me that we need to persist to achieve that standard of competition. All I was saying was that as in the circumstance where you have an interest in innovation, for example, there may be some particular factor in the particular defense industry that we would want to take into place.

It is really very much like the question of how we are going to continue to achieve innovation by allowing some joint activity that we might not allow otherwise under the antitrust laws. That is really what I had in mind, that I don't want us to think that we close our eyes to factors that may be in the national interest, but that we should not apply the antitrust laws differentially beyond identifying those factors and deciding what place they should have in the equation.

Senator METZENBAUM. Last week the Supreme Court ruled in the case of *Bray v. Alexandria Women's Health Clinic*. In that case, the pro-life organization Operation Rescue challenged a Federal injunction that prohibited clinic blockades while allowing for lawful demonstrations.

Clinic blockades by angry mobs not only obstruct entrances to clinics, but also delay or prevent women from obtaining essential and constitutionally protected medical services.

The Bush administration filed a brief in support of Operation Rescue which urged the Court to hold that the extreme and intimidating tactics used by the organization do not violate women's civil rights.

Unfortunately, the Court agreed with the argument put forth by Operation Rescue and the Bush administration. That decision is an open invitation for Operation Rescue and other pro-life groups to

continue the blockades and to increase the harassment of women who seek to enter medical clinics.

Will the Department support Federal legislation to overturn that Supreme Court decision? That guarantees women freedom of access to medical clinics.

Ms. BAIRD. Seeking legislation is one route that may be necessary to deal with that. It may also be possible that there are other civil rights laws that we can use to assure that women have access to these clinics.

What you are talking about here, of course, is a situation where free speech goes over the line and becomes action that makes others unable to exercise their rights, and in particular, women to exercise their right of choice.

It may be that through some of the conspiracy laws under the civil rights statutes that we can get at this through enforcement actions without needing legislation, there may be conspiracies that interfere with the exercise of civil rights, and I would want to look at that. And if we need legislation, then we need to look at the best way to approach it.

Senator METZENBAUM. Thank you.

Last year Congress overwhelmingly passed legislation to reregulate the cable industry. President Bush vetoed the bill, but Congress was able to override that veto. President Clinton and Vice President Gore supported the legislation.

A number of cable companies have filed constitutional challenges to the act, claiming that the burdens imposed by the legislation violate the first amendment rights of cable operators.

Congress gave careful consideration to the first amendment concerns raised about the legislation, and I expect the bill's constitutionality will be upheld in the courts.

The Justice Department, however, has refused to defend the constitutionality of the bill's "must carry" provisions. These provisions ensure that local broadcast stations will be carried on cable systems. The Department claims it would be unethical for Justice to defend the provisions in court because it previously advised President Bush that they were unconstitutional.

The Justice Department has an obligation to defend the constitutionality of Federal laws unless the statute raises separation of powers concerns for the executive branch or is patently unconstitutional. Neither of those exceptions is relevant here.

Briefs in this case are due early in February. I would hope the Clinton Justice Department would defend the constitutionality of a law which President Clinton supported during the campaign.

If you are confirmed, what steps will you take to enable the Department to defend the constitutionality of the act in a timely manner?

Ms. BAIRD. Senator, I would have us look at that very quickly. I will tell you that I agree with your standard on when the Justice Department refuses to defend the constitutionality of a statute. If the Justice Department advises the President that a statute is unconstitutional and he doesn't veto it on that ground, it is tough for me to see—there may be a circumstance, I would have to look hard at it. But it is tough to see that if the President signs a bill that he should sign something he considers unconstitutional. So I would

have to look at this, but it seems to me that simply—that the Justice Department really must defend the constitutionality of legislation unless there are the countervailing circumstances of the intrusion on the executive authority or the other issue as you mentioned.

Senator METZENBAUM. Thank you very much.

Senator KENNEDY [presiding]. Senator Grassley.

Senator GRASSLEY. Thank you very much, Mr. Chairman.

I still want to ask some questions about the employment situation. Yesterday we concentrated on the babysitter, and the difficulties that you had in finding the right sort of caretaker. But we haven't talked much about the chauffeur who was in your employ, so it is just a matter of clarifying a few facts.

It sounds like, as you described it, kind of a unique situation that you had. You were looking for a couple who could serve with both the care of your child and with some household chores as well as to serve as a driver. Did you advertise the job in this way?

Ms. BAIRD. Senator Grassley, we were looking for a babysitter. We were told by employment agencies that sometimes it was possible to more easily find a babysitter, particularly to provide stable care in a community where there weren't many local people available, if one was willing to also take a couple, which would require paying more obviously. And so we, therefore, concluded that if we had to hire a couple, that we would do that. We were not going out looking for a couple because we wanted a broader range of things done. We had concluded we would look for a babysitter, but be prepared to offer the position to a couple, and there were things that we could usefully use the other member of the couple for.

The reason that driving me to work was one of those things was that we live an hour from where I work, and I would be spending 2 hours on the road. It seemed to me that if in those 2 hours I could work the whole time I was on the road, it would leave me free when I got home at night to be with my son. And so it was really very much in that same interest, the interest of child care—excuse me, the interest of my child that I thought that having someone drive me made a lot of sense because I wouldn't be losing 2 more hours of work that I might have to make up for in the evening.

Senator GRASSLEY. You advertised, then, for a couple or you advertised for a babysitter?

Ms. BAIRD. I believe—I am not sure about this, but I believe that we may well have said that we would take a couple in the ad.

Senator GRASSLEY. Did you interview any other couples as opposed to a babysitter, any other couples that could fill this same requirement?

Ms. BAIRD. Yes.

Senator GRASSLEY. You did. That would serve as a babysitter as well as a driver?

Ms. BAIRD. Yes.

Senator GRASSLEY. You did. Did you ever advertise just for a driver or contact an employment agency seeking a driver independent of the babysitter?

Ms. BAIRD. When we were looking for a babysitter, we advertised for a babysitter or a couple.

Senator GRASSLEY. OK, but you did not—separate from the baby-sitting, you didn't advertise for a driver?

Ms. BAIRD. After the husband of the couple left, I did want to continue to have a driver because it was working out so well in terms of having the time with my son, not losing those 2 hours. So I did then, yes.

Senator GRASSLEY. How did you reach the decision that you would only seek to file labor certification papers just on behalf of the female employee?

Ms. BAIRD. The lawyer advised that that was all that was necessary and customary.

Senator GRASSLEY. OK. I will leave that subject, and I would like to talk a little bit about civil justice reform. I know that this has been discussed, but maybe some things haven't been covered.

I visited with you about my longstanding interest in making our legal system more efficient and responsive for those who have legitimate disputes. I think you have done a very good job, both privately as well as publicly, noting your frustrations with unnecessary litigation. And I think you spoke out well in a paper or a speech that you gave in March 1992 at the Great Performers Executive Council, where you spoke about the Superfund law being long on litigation and short on cleanup.

Will you be in a position to help break the gridlock of reform and encourage the administration to lead on the issue of civil justice reform?

Ms. BAIRD. I would certainly hope so.

Senator GRASSLEY. At Aetna, you were involved in this issue. Aetna has detailed positions on many of the different pieces of civil justice reform. Senator Kohl this morning asked you about joint and several liability. Aetna favors abolishing joint and several liability. Do you agree or disagree with that position?

Ms. BAIRD. I haven't taken a position or developed a position, really, Senator, on the issue of joint and several liability. There are a number of issues in the civil justice reform area that I would like to have the opportunity to have the Justice Department look at because we do, I think, in reenergizing the management of the Department, want to reenergize as well the attentiveness to the effectiveness of our court system.

Senator GRASSLEY. You have said that you oppose caps on damages which both you and Aetna say would hurt the young and most severely injured. But in some cases, I feel, I think reformers feel, punitive damages are a windfall to plaintiffs. Shouldn't we begin discussing whether there should be guidelines, just simple guidelines on punitive damages? I mean not on the guidelines, but on how they would be awarded.

Ms. BAIRD. Right, the circumstances in which punitives are awarded. Is that your point?

Senator GRASSLEY. Yes.

Ms. BAIRD. I would want to look at all these areas of civil justice reform. Punitives often get singled out as the most onerous problems in the system, and I think the question is how do they fit with the other remedies that are available. And I think that it is worth our looking at all of these situations.

I am concerned that caps on punitive damages don't really have any way that they might work effectively without harming the people who are hurt most, as I said before. I, of course, realize that no one wants any issue off the table before a discussion starts, but that one doesn't really interest me very much and, in fact, seems to me to be very problematic.

But I think that we should begin to have conversations about what this administration's approach ought to be to these various issues of civil justice reform.

Senator GRASSLEY. What about the issue of putting punitive damages into some overall public fund where they can be used to deter future behavior and provide some sort of overall benefit to society rather than just to one person, as long as they are punitive in nature?

Ms. BAIRD. It is not something I have thought about, but I am very open to creative ideas. I think the question is to what extent does the person who has been damaged appropriately get access to that money as well as the punitive issue. But there may be some real virtue to having—and, in fact, it may take away some of the public antipathy toward punitive damages to have some broader public purpose that is also served in the recovery.

It doesn't, of course, address the concerns of those who feel that punitive damages can be so heavy, can be so large as to be disproportionate to the conduct to have the money just go to a different source or to a different place.

Senator GRASSLEY. It seems to me in some of your answers on this whole issue of civil justice reform—and I hope that this isn't an unfair summary as I have heard some different answers to different members. But it seems to me that where Aetna has had a position that trial lawyers associations opposed, you have said that you would be glad to study it. On other places where Aetna has had a position that agrees with the trial lawyers, you have been very willing to take a strong position before our committee on that and state a position as opposed to just begging an opportunity to study.

Ms. BAIRD. Well, Senator, if I could respond to that, I think the only two aspects of the civil justice reform debate that I have said are ones where I have a position are caps on punitive damages and the fee-shifting rule. And the reason for those being particularly acute in my mind is that those are areas where the rules very clearly to me disadvantage the most disadvantaged. And in looking at these broader rules, the picture is more complicated.

I think I said with respect to the caps on punitive damages that those who are injured the worst are young, get hurt the most; the fee-shifting rule, those who find it difficult enough as it is to engage in the cost of litigation have a real risk potential when they don't know whether or not they will win when they start out, and it deters people from bringing litigation in a way that seems to me to be too large.

I have tried to express here—in part the whole debate about my interest in civil justice reform started because of people's concern about Aetna positions where I have not taken a position. And so what I have tried to reflect in this hearing is the areas where I do—that I have thought about and have some developed personal

sense of, I don't in any way speak on any of this yet for what the Justice Department position might be. But I assure you that my sense of the issues where I have identified a position doesn't have to do with trial lawyer opposition or not, but really has to do with the issues that have come to my attention and that I have thought about more than others because of this potential impact on those who file suit.

Senator GRASSLEY. As a practical matter, in the next 4 years there might not be much civil justice reform. We have got the problem of this stuff being in the adversarial and costly relationship of the courtroom. I have pushed hard for alternative dispute resolution. Do you see a role for alternative dispute resolution? Have you ever been involved in promoting the concept? And if you haven't, OK, but what do you think about it as Attorney General?

Ms. BAIRD. I think that we need to look hard at how the Government might use alternative dispute resolution and how it might promote it in promoting efficiency.

Again, I am reluctant to say I need to study how that might be from a Justice Department point of view, but I have some familiarity with alternative dispute resolution. I am a real advocate of finding ways to effectively resolve disputes without huge costs for the resolution process. And as you know, I believe I have been attempting to change as significantly as possible the basic way that lawyers who defend companies are paid, trying to get away from having them paid on an hourly basis regardless of what they do, to being paid on a basis that is more like plaintiffs' lawyers get paid, in fact getting paid for their results, my notion there being that you need to drive legal process toward more efficient approaches to problem solving. And that is very compatible with looking to alternatives like alternative dispute resolution.

Where people have expressed reservations about alternative dispute resolution is where those who don't have the power to affect whether or not that is the remedy available to them, are nevertheless required to go through an alternative dispute resolution rather than the fuller litigation. And I would want to look at the issue from the Justice Department's point of view to see where it is appropriate to make available this remedy and where it may even be appropriate to require it and where it is not.

Senator GRASSLEY. Maybe you could put your experience in trying to reform things in the attorney fees area for Aetna to good use in the Justice Department. That is needed because our Government is involved in a great deal of volume of litigation. And you might say useless litigation on fees, because we have so many fee-shifting statutes.

To what extent would you be prepared or feel prepared, both the background and in promoting policy, to lead on the issue of fee-shifting. Might you advocate limits on one way that fee shifting—fee-shifting laws, or perhaps limiting the amount of fees that could be assessed against Government? I can think of one area I worked in similar to the Equal Access to Justice Act, but my interest is not limited just to that. How you might be able to help in some of those areas if you are inclined?

Ms. BAIRD. Senator, I would certainly like to look at how the ideas I have developed at Aetna might work toward the interests

of the taxpayer to reach the same I was seeking in the private sector, which was to have dollars spent on legal fees spent more effectively.

Senator GRASSLEY. Mr. Chairman, my time is up. Thank you very much.

The CHAIRMAN. Thank you very much.

We have been going for a long time, Ms. Baird. Would you like to take a break now or wait for another round? How would you like to do it?

Ms. BAIRD. Whichever.

Senator DECONCINI. It is up to you, Ms. Baird. Do you want to proceed?

Ms. BAIRD. That is fine.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you.

The CHAIRMAN. We will take a short break after.

Ms. BAIRD. Right after, that is OK.

Senator DECONCINI. Thank you, Ms. Baird. I can appreciate it if you should change your mind through the questioning. You won't because you are so tough, but I understand. You have been there a long time, and it is a grueling experience, I am sure.

We have talked a lot about the hiring of undocumented aliens. I am not going to pursue that with you. I think it has been pursued. We all know what happened, and we have to make our judgment. And, apparently, there are going to be other witnesses regarding that. But I have always opposed employer sanctions because they place the burden on the private employer. I voted against the Simpson-Mazzoli bill primarily for that reason, and I have supported and cosponsored Senator Kennedy's and Hatch's bill repealing that. And I have really two questions to ask you regarding employer sanctions. One deals with the discussion you had with Senator Simpson here. He feels very strongly the other way. And having gone through what you went through on a personal basis, maybe you can relate it to others you know that may have had experiences like that. From your perspective, do you think employer sanctions ought to be repealed, or have you had a chance to give it a lot of thought?

Ms. BAIRD. Senator, I certainly think it was appropriate in my circumstance that the employer sanction was applied since it was on the books.

Senator DECONCINI. I am really not asking that question, and I appreciate that. And I am not trying to give you an out here.

Ms. BAIRD. No; I understand.

Senator DECONCINI. I just really want to know what you think about it because it troubles me that our policy under that bill places the enforcement of our immigration laws on the employer. I don't think that is the right thing to do, and never have. That should be done by the Government, and that has the responsibility for illegal aliens in our country and not the employer. But maybe you disagree.

Ms. BAIRD. Well, my situation is also, I think, different from the more typical situation that these laws address. The laws are addressed very much to the commercial employer environment, and it is really difficult for me to comment on the policy issue sitting

where I sit. I haven't thought about the commercial employer environment and whether that employer should have the paperwork and reporting responsibilities and all of that. So I find it difficult to answer your question without further thought.

Senator DECONCINI. Fair enough. Do you think your personal experience, having gone through this, might necessitate recusing yourself because you might not be able to be objective?

Ms. BAIRD. I would submit that issue to the ethics office at the Justice Department, and I really can't tell you what they—

Senator DECONCINI. Fair enough. Now, having gone through the difficulty that you have gone through the last couple of days here, how will that affect you when you are faced with the problem of enforcing the immigration laws as they stand on the books the day you are sworn in as Attorney General? Will this experience change you in any way other than making you far more sensitive to the problems and what happens if a person does hire—what I am interested in finding out is, what has happened to you as a result of this, because I find that when witnesses and nominees go through these grueling hearings it can change their attitude. There can be some deep-seated resentment at even having to address things of a personal nature, of household help and what you pay them and how they eat and what their hours are and those kinds of things, and still maintain the professionalism that is necessary to carry on in the job. Has this really changed you, Ms. Baird?

Ms. BAIRD. Senator, when we hired these people, I did not give adequate attention to the fact that it was a violation to employ someone who wasn't documented. When I did give attention to this, I raised it, I have openly address it, and I have taken responsibility for it. I think that says about me and what I have learned about this that I believe in accepting responsibility for making errors, for violating the law. I believe in the imposition of responsibility for that.

I don't in any way think that it was inappropriate that the \$2,900 civil penalty would be imposed on me even though it is not generally imposed. I believe that that was the right thing for the INS to do.

I think that, if anything, this experience affirms my belief in the rule of law and in the even-handed treatment of people under law, whether they are rich or poor, black or white; and that that is what will stay with me as Attorney General in my enforcement of the law.

Senator DECONCINI. Do you have a perception of what you think the public image will be of an Attorney General who, in fact, did violate the law, even though you have clearly taken the responsibility for it and there may be some mitigation yet to come out that isn't here? What do you think the reaction of the public is going to be once you are sworn in from the standpoint of, well, why should I obey the law, she didn't? Now, she did have to pay a price for it because she was fined and paid a penalty, but maybe had she not been nominated for Attorney General nothing would have ever happened. That is probably the case.

Ms. BAIRD. I think that the public will take from this not here is someone who tried to get away with violating the law or here is someone who was allowed to get away with violating the law. I

think what the public takes from this is here is someone who believes openly in being open about whether or not someone is complying with the law. Here is someone who believes in disclosure and accepting one's medicine, and here is someone who believes that the law should apply to everyone.

I have not attempted to say that this was a minor thing. I have not attempted to say this generally isn't enforced and it is not enforced because everybody does it. I haven't said these things.

Senator DECONCINI. No; you haven't, and that is to your credit. And I understand you have also indicated that though your lawyer indicated it was a technical violation, you have not held that up as a defense either.

Ms. BAIRD. No; and I think that what it says is that President Clinton, in selecting me to do this job, and the Senate, in confirming me for it, has concluded that she made a mistake and she addressed it openly, and one mistake is not harshly held against someone in evaluating their whole lifetime. And I think that is an important message for the public. I think that is an important positive, constructive message for the public, not go out there and without concern for the implications make a mistake, because it is not a mistake if you do it that way. But if you address something that we are a forgiving country and that we will put these things in their proper context, to my mind it speaks of the positive side of the American spirit if I am confirmed.

Senator DECONCINI. Thank you. Let me switch subjects on you and talk about plea agreements and plea bargains. I recognize as a former prosecutor that you always have to have that option, and plea agreements have to be flexible and that the criminal justice system wouldn't work without them.

But last year, General Manuel Noriega was convicted on drug-trafficking charges in Florida. At some point during the trial, the Government felt a conviction was in jeopardy; at least that is the way it seemed to be reported in the press. And fearing the political fallout of losing the case, they started to make plea bargain agreements to bolster their case.

They made one such agreement with Mr. Leder, Carl Leder, who was most notorious, was convicted, and was sentenced to life plus 135 years, which I think anybody would say is a long time; he later stated that he was testifying in the hopes of winning a reduced sentence in return for testifying against Noriega, and later was transferred out of our country's highest security in Marion, IL, to another institution. The administration went along with Mr. Leder's wishes and brought eight members of his family to the United States to live under Federal protection.

There are others. Noriega's former bagman, Colonel Delcid, faced 70 years in jail on four counts of drug trafficking. Prosecutors dropped three counts and recommended a maximum of 19 years on his remaining counts. They have also promised not to deport him.

I was so outraged by the practice that I introduced legislation prohibiting the administration from entering into plea agreements with drug kingpins in limited situations.

Have you given any thought to such outrageous plea bargains just for the fact of securing a political victory? And what would you do about it?

Ms. BAIRD. I can't comment on the particular case, obviously, but I think that it has got to be carefully exercised; that in trying to go after and bring down drug kingpins, we have to be careful not to treat others in a way that doesn't—I'm sorry?

Senator DECONCINI. Excuse me. Would you let me interrupt you and just ask you, would you think that it would be unreasonable to reduce a life-plus-135-year sentence or a 70-year sentence to 19 years just to get a plea agreement against another drug kingpin?

Ms. BAIRD. It is difficult for me to comment not knowing the facts and whether one was going to achieve a major victory in the war against drugs. I would think it would be very unreasonable to do it for a political victory as you have described, and this goes to the broader point I have made about the critical importance of avoiding politicizing prosecutions as well as the plea agreements. I am not close enough to the facts of the case that I—

Senator DECONCINI. My point being, is that trading Leder, who is more notorious than Manuel Noriega, to get Manuel Noriega just really bothers me, and I think it bothers the public. I just hope you are as outraged as I am, and you don't need to respond because you don't want to talk about that case, although it is a done deal. But I just want to leave you with one Senator's outrage at what has happened in that area.

I would like to address another thing, and that is the Federal boot camp provisions in the law now regarding correction. I recently visited one in Lewisburg, PA, and I found it very interesting, a new process, as you may be aware, where first-time offenders are put into a military boot camp type of environment, and if they complete it their sentence is reduced. The purpose is to keep this population separated from the hard-core criminals and to instill some discipline and pride. And it is too early to tell whether it is going to work, but I wonder if you are familiar with it and if you intend to expand it or do anything about it or if you have had any thoughts about this type of innovativeness in the correction area.

Ms. BAIRD. From my general knowledge of it, it seems to me to be something that we ought to expand on. In the juvenile justice area in particular, it seems to me that boot camps and other forms of alternative incarceration are worth focusing on because there is so much more that we can do to try to break the pattern of crime with juveniles if we use some of these creative methods rather than using more traditional methods of incarceration.

Senator DECONCINI. Thank you. I hope you will look at some of those options, including the option of the Federal Bureau of Prisons getting into more leasing space. The capital investment on these prisons is tremendous, as you probably can imagine. I don't know where we would get the money to build all these buildings. It is nothing in comparison to a Federal courthouse, what you have to spend on a penitentiary.

I know some questions were asked of you about President Clinton's promise to put 100,000 police on the beat or in the streets to help. I haven't talked to him about it. I agree with him. But I wonder if you have given it any thought. How is he going to do that? First, how is he going to pay for it, not just the first year, and if it is going to be on a grant basis to the States, local law enforce-

ment, or if it is just going to be Federal law enforcement or a combination? Has anybody given any thought to that?

Ms. BAIRD. We have a lot of work to do to figure out how to achieve it best. It clearly should be done in partnership with local police departments so that it works for them as well as gets the police out on the street.

We have a long way to go, I think, to figure out how we are going to do it and what are the funding tradeoffs, and I would hope that we could work together on that. And I think we will focus on that very quickly because we want these 100,000 police out there over these next 3, 4 years.

Senator DECONCINI. Have you talked to anybody in the administration about it?

Ms. BAIRD. I have talked with President Clinton about it.

Senator DECONCINI. You have?

Ms. BAIRD. And I have talked with——

Senator DECONCINI. Maybe you can share with us, is he talking about the Federal Government paying the bill for this fully? Is that his concept?

Ms. BAIRD. We haven't talked about the implementation of it in any detail. I have talked with some others who developed the idea during the campaign. But I think we have a long way to go to work out how it ought best be paid for.

There are a number of ideas that have developed around how to pay for this.

Senator DECONCINI. Can you share any of those without, you know, disclosing proprietary interests?

Ms. BAIRD. Oh, no, I am not concerned about that. I just——

Senator DECONCINI. Because I don't know how we do it with the strapped—at least in my State, where the local sheriff has to reduce and cut personnel, the local police departments, the State police departments. And in the Federal Government, we are trying to add people, and if we are going to try to put 100,000, and Arizona gets its share, which may be 500 new police people throughout the State, how are we going to pay for it? I think it is a good idea, and there may be a way to do it. I have got some ideas on it, but I wondered what the administration is thinking about.

Ms. BAIRD. I think we are looking to a significant Federal role in doing that, and we want to put 100,000 more on the street. And there is attrition that takes place, and you have to deal with that too. So I think that it is a significant challenge, but it is one that we are very committed to. And I think it is a critical challenge.

Senator DECONCINI. And that would include local law enforcement? That is what you are talking about here?

Ms. BAIRD. Yes.

Senator DECONCINI. Not just Federal.

Ms. BAIRD. Right.

Senator DECONCINI. Thank you, Ms. Baird.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. We will now take a 5-minute break and then come back for Senator Specter's questions.

[Recess at 5:47 p.m.]

EVENING SESSION

The CHAIRMAN. The hearing will come to order.

Ms. Baird, I admire you in many ways, most of all your ability to sit this long for this many questions, knowing that there is this much to go. I understand from your staff that it is your desire to attempt to finish tonight your testimony. We are obviously happy to attempt to accommodate that, but I do not want this committee to be put in the position of appearing to be inflicting cruel and unusual punishment.

We are prepared to adjourn at any hour until tomorrow and resume questioning then. But I want to make it your call, and to the extent possible, I will attempt to accommodate your desire as to whether you wish to go and how much longer you wish to go.

As I look down this bench, I calculate there is at least another 2 hours' worth of questioning, and that will only be giving everyone one more round of 15 minutes' worth of questions. That means you will be sitting there, assuming we took no break, until close to 8:30 tonight.

You don't have to make a final judgment as to how long you wish to go, but truly, we mean this sincerely, we would like to accommodate your interest. None of us would want to be in the position of having to sit there that long for any reason.

Ms. BAIRD. Well, it is my preference to continue this evening, if that is something you—

The CHAIRMAN. Well, it is obvious you have sat through a lot of board meetings to be able to do this. [Laughter.]

Ms. BAIRD. They haven't been quite this vibrant.

The CHAIRMAN. Well, the press is overjoyed with your decision. I can see them all pounding the table over there like, "Here, here, let's keep going."

At any rate, what we will do, the commitment I will make to this extent: We will go at least until 7 o'clock, and then we will reconsider where we are at that time.

Now, with that, let me yield to my distinguished friend from Pennsylvania, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I compliment Senator Biden, the chairman, for what he has just said, and I would join him, Ms. Baird, in urging you to think it through, because it is a long time, what you say is obviously important, and nobody is as fresh at 6:30 p.m. as they were at 10 a.m. That is your call, but I know Senator Biden would reconvene at 8 a.m. or 9 a.m. or any time when you might be fresh, and I would urge you to think about that carefully.

I want to return, Ms. Baird, to the chronology as to what happened after the Peruvian couple was employed in July 1990, accepting your proposition that once you had told the Federal Government about employing illegal aliens, you acted on a course of conduct that you should be able to continue to employ them so long as you move forward to try to get them in a legal status. I asked you on Tuesday, when I had a chance to question you for 15 minutes, to prepare a chronology to point out exactly where you stood on the matter at each stage, with the reasons why the delays were

there. I have received today a chronology which purports to be prepared by Professor Gewirtz——

Ms. BAIRD. Senator, could I interrupt just for 1 minute?

Senator SPECTER. Sure.

Ms. BAIRD. Because I don't want you to ask your question on a premise that isn't exactly what I said. What I said was not that I thought that once you informed the Government it was OK to continue to employ. What I said was that my understanding, when I agreed with my husband that we would hire these people, was that although it was a violation, it was a violation not enforced and there was a process that could be used in this situation to inform the Government. And I did expect that we would be using that process as quickly as it could be used with whatever requirements there were in the process. But I just wanted to correct the statement because I think the process contemplates that there is some period of time before the papers are actually filed with the Government in which documents are collected that are needed before the papers can be filed.

Senator SPECTER. Well, I accept that modification, Ms. Baird. I wrote down your testimony in response to Senator Biden, which states, "I allowed myself to think that the process gave tacit approval to this situation."

Ms. BAIRD. That is right, and part of the process I had in mind was whatever one might need to do in advance of actually filing with the Government because the Government expected certain things to happen.

Senator SPECTER. All right, and now you have added, which I think you testified to before, the words "as quickly as it could be used." Accepting your version of tacit approval, I think it is very important what you were doing to get it done "as quickly as it could be done." I had started to say that there is a chronology on the child care issue through April 1991 prepared by Professor Gewirtz which does not answer the issue in two respects. One is that it ends in April 1991, and there is a substantial timelag from April 1992 until October 13, when your husband submitted a form which had been prepared by the lawyer, Thomas Belote.

Ms. BAIRD. I am sorry if we misunderstood the request, and if you would like, then we will add to that. You want a chronology from April 1991 forward?

Senator SPECTER. From July 1990 through to the end of 1992 when——

Ms. BAIRD. To the end of 1992, OK.

Senator SPECTER. When the woman left your employ. What I am looking for is your chronology as opposed to your husband's chronology as to what it was which you understood.

Ms. BAIRD. I see. The reason that we gave you my husband's chronology was this was after you had said you might want him to appear to testify because he knew the facts of what transpired since he had been the one who handled it.

If I had given you a chronology of what I knew, it would have been much more limited because my knowledge is derived from what he did. So we thought this would be more informative and was, in fact, what you were looking for. And that is why we did

this, although I am happy to give you, of course, whatever it is that you would like.

Senator SPECTER. Well, it is good to have his chronology because I think he does need to testify. But the more important aspect is your chronology and how you were proceeding, and, of course, you were proceeding based on what he had told you. But we are really looking at your response to the situation as to what you did or what you should have done.

I know that in a statement that your husband gave to the committee, there is a line:

Professor Gewirtz says that the reason the I-9 form was completed for the original nanny and filed was that Zoe Baird took care of it.

My question to you is: Did you do that? And if so, why not do it later?

Ms. BAIRD. I am looking for the statement, but it is nice of him to say it. This was submitted to you while I was testifying.

I did handle the prior babysitter, and I then, when we began to employ these people, was starting my new job with Aetna and my husband was on his summer vacation. So he had the time to do this, and he took responsibility for it. In our household, as in many others, I am sure, given how busy both members of a two working couple are, we divide responsibility, and here he took over the responsibility for handling this.

Senator SPECTER. Another statement in what your husband gave to the staff was that, "The delay was owed to the long time that it took to get original documents from Peru." And in your response to Senator Biden's questions, you stated that you needed Peruvian documents, the birth certificate and school records. This is at variance with what the fact that lawyer, Thomas Belote, had said that there were no Peruvian records which were necessary.

My question to you is: What is your basis for the conclusion that you needed records from Peru in the face of what Lawyer Thomas Belote has to say?

Ms. BAIRD. My understanding was, as I expressed it, that the documents that were needed—and this is my understanding from my husband. I never talked with the lawyer. But my understanding from my husband was that the documents that were needed included the documents I mentioned from Peru.

I can't comment further on that. If Mr. Belote is saying that those documents weren't needed now, my understanding was that my husband believed that they were needed.

Senator SPECTER. When I—

Ms. BAIRD. I don't know—excuse me, Senator. I'm sorry to interrupt. But I don't know whether we are talking about the same things because there were not official Peruvian Government documents needed; rather, documents that needed to come from Peru, as I understood it. As I say, my knowledge here is very much secondhand. I am doing the best I can to try to give you answers about what I understood, but I have said from the beginning that my understandings were secondhand.

Senator SPECTER. Well, Thomas Belote says that he did not need any Peruvian documents, but we will pursue that perhaps with your husband.

The timelag from July 1990 until Professor Gewirtz retains the attorney in April 1991 is a question which I think requires further exploration.

After I talked to a lawyer at the lunch break on Tuesday, he called me back in the evening and I had a talk with him Tuesday night and he was able to find the date of November 6, when your husband had called him on the first occasion. Then he submitted a letter to the committee yesterday, and an important line appears on page 1, "Paul's"—referring to your husband—"second telephone call on April 12, 1991, in which he referred to a conversation 6 months earlier seems to dispel the notion that Paul's telephone contact with this office commenced at the time of the hiring of Mr. and Mrs."—and he gives the name—"in July 1990 or that he had multiple conversations with this office after the hiring and before he came to me on April 20, 1991."

My question to you is, what was there, if anything, in your conversations with your husband which led you to conclude that he was proceeding promptly to get the matter taken care of between July 1990 and April 1991?

Ms. BAIRD. Let me give you two responses to that, and maybe I say that to mark that I am going to have a second response.

First of all, my husband—I had believed that Mr. Belote was one of the people my husband talked to at the time that we hired these people. I know there were other lawyers that he talked to. He has told me there were other lawyers he talked to. I think they are mentioned in the chronology he gave you, a Mr. Williams and a Mr. Rabena, and he also had a meeting with another lawyer, a Ms. Pepe. I was aware that he was having meetings with lawyers, so in that period I certainly thought that he was proceeding on this.

I would also ask whether I have been provided with a copy of the letter, because I am not sure what I am responding to, if this is a sentence in the middle of a longer letter or what it is. And if I have been provided a copy, I haven't seen it yet.

Senator SPECTER. Well, I will see that you do promptly. Let me move away from this to a couple of other questions in the brief time I have remaining. It may be that a more systematic way is to ask your husband first, and then perhaps to ask you some things later.

On the question of tort reform, another subject of substantial importance which has been broached by others, I would be interested to know if you have taken any position on substantive law changes on, say, product liability or medical malpractice, or on changes on civil procedure as it relates to tort reform, such as the greater use of arbitration or speedier timetables.

Ms. BAIRD. I am trying to think if I have ever addressed any of them. I don't believe so. The only reason I hesitate is the arbitration issue, I may have made a comment like I made earlier today about arbitration being a tool, along with others, that ought to be thought about. I am on the board of the American Arbitration Association. I have only attended one meeting in my tenure on that board. I haven't been an active participant.

Senator SPECTER. I understand the question of the police corps was raised earlier, and I just want to lend my support to that concept, which is legislation that I have sponsored for almost a decade,

developed by Adam Wolinsky. As I understand it, you are favorably disposed to the police corps as a matter on President Clinton's agenda, but you have not gone into it in any significant detail?

Ms. BAIRD. Yes, that's right, we haven't developed a program to implement it, but as you point out, there is 25 years of good learning. But we need to have real conversations with the police organizations to see how to make this work for them, too.

Senator SPECTER. Are you in a position at this time to make a commitment to enforce the obscenity laws in the general way which they have been enforced up to the present time?

Ms. BAIRD. I am really not in the position to talk about exactly how we will enforce those laws. I commented to Senator Hatch earlier today, of course, somewhat on that, but I think that we need to develop an enforcement policy for this administration.

Senator SPECTER. With respect to the appointment of judges, that is a matter of really enormous importance in the administration of justice in our society, and too often that is not attended to as promptly as it should be. This is a subject that you and I talked about when we met privately in my office.

I would urge you, if confirmed, to give close attention to the speed of the appointments. I submitted a letter to the President yesterday—and I would like to have it made a part of the record—making recommendations. I understand the protocol of the party affiliation—

The CHAIRMAN. Making recommendations on?

Senator SPECTER. On district court judges where we have vacancies in the Middle District and Western District of Pennsylvania and the Court of Appeals. I have a duty, as a Senator, the blue slip, et cetera, et cetera.

The only point I want to make to you now—I want to put the letter in the record, but I do want to emphasize in just a few seconds at least my view of the importance of moving ahead with dispatch on it.

Ms. BAIRD. I agree with that, and I think it would be a very serious commitment. I know that President Clinton feels that we need to make the appointment of judges one of the highest priorities.

[The letter referred to follows:]

U.S. SENATE,
Washington, DC, January 20, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: Congratulations on your Inauguration.

In light of the heavy backlogs and vacancies on the United States District Courts for the Western and Middle Districts of Pennsylvania and the Court of Appeals for the Third Circuit, I write to recommend potential nominees for your consideration and to urge your prompt action in submission of nominations to the Senate. The recommendations for the District Courts come from a bipartisan judicial nominating Commission which has been in existence since the 1970s. I had urged Senator Wofford to appoint half the members to the Commission and join in these recommendations, but he declined advising that he intended to act on his own.

For the Middle District (2 vacancies), I recommend alphabetically:

Pennsylvania Common Pleas Court Judge Robert John Eby

James Joseph Haggerty, Esq.

Common Pleas Court Judge Thomas C. Raup

Linda Cheryl Taliaferro, Esq.

John W. Thompson, Jr., Esq.

For the Western District (2 vacancies), I recommend:

Common Pleas Court Judge Donetta Ambrose
 Thomas L. Cooper, Esq.
 Professor Sandra D. Jordan
 Common Pleas Court Judge Eugene Strassburger
 Debra Barnhart Todd, Esq.

For the Court of Appeals for the Third Circuit (2 vacancies), I recommend:

Judge Donetta Ambrose
 Former United States Attorney Michael Baylson
 Former Commonwealth Judge Robert L. Byer
 U.S. District Judge James T. Giles
 James Joseph Haggerty, Esq.
 Professor Sandra D. Jordan
 U.S. District Judge James F. McClure, Jr.
 Common Pleas Court Judge Carolyn Temin
 U.S. District Judge Franklin S. Van Antwerpen
 U.S. District Judge Jay C. Waldman

President Bush had submitted the names of Judge Waldman and Judge Van Antwerpen to the Senate in 1992 so the appointment of either or both of them would expedite the filling of one or both of those vacancies.

I wish you well and look forward to working with you.

Sincerely,

ARLEN SPECTER.

Senator SPECTER. And while the yellow light is still flickering, my last question is that I note that you have testified again today about your—these are your words—“openly bringing up the issue as to the illegal immigration to everyone from the beginning.”

As I understand it, you discussed this issue with the Chairman Senator Biden and the ranking member Senator Hatch, when they met with you on January 5. You and I met on January 7, and you did not mention it to me, but you did call me on the evening of January 13, a week ago yesterday, and we did talk a week ago today. My question to you is, in light of your interest in being open about it, why did you not discuss it with me at our first meeting?

Ms. BAIRD. Senator, my understanding was not only, of course, that you had learned about the details of this from the FBI report, but that the protocol of the committee put in the hands of the chairman and the ranking member the decision about how to bring information of any significant type or insignificant to other members of the committee, and so I felt my obligation was to make sure that they were informed from the beginning and to make sure that I disclosed this to the FBI, so that you would have a full report on it. But I did think that it was my prerogative to discuss this with all the other members of the committee.

Senator SPECTER. So you did not talk about it to any other members except the chairman and ranking member?

Ms. BAIRD. No; I believe that Senator Biden asked me to talk to another member on his side of the aisle and I did that.

Senator SPECTER. Then why the call, simply because it was about to be a matter of notoriety in the press?

Ms. BAIRD. It was going to be in the newspaper and I tried to call each member, so that you wouldn't be surprised, so that you would be able to comment in response or not learn about this first by opening your paper. It seems to me that, as a courtesy, I should make sure that each member of the committee wasn't surprised by this matter.

The intention, of course—I don't want to speak for the chairman and the ranking member, but certainly my intention was that you

would learn about the story in the FBI report, not in the newspaper, and so I didn't anticipate, of course, that that would develop.

Senator SPECTER. I have other questions. I would just say as a comment that I would suggest to you that a better practice, when you have something like that which is present and potentially problem-some, to make the disclosure to all of us early on, just as you did to the chairman and the ranking member and to the one other member whom the chairman had requested you do so.

Thank you very much.

Ms. BAIRD. Thank you.

The CHAIRMAN. I think it is important, obviously, in this to set the record straight, if my colleague will allow me 2 minutes, if not set it straight—that may be a misstatement—to clarify it.

On January 5, when I was informed of this situation by the nominee, it was prior to the committee, majority or minority, receiving the FBI report. As the practice of the committee is, upon receiving an FBI report, any issue of controversy in the report is immediately called to the attention of every member of the committee, and they are encouraged to read the FBI report and sit with the investigative staff while that is done.

My recollection is that I encouraged the nominee, I asked the nominee whom she had told this to, and encouraged her to tell—what she said is accurate and I assume intentionally complete, but I think not complete.

What I told the nominee was I asked who else she had informed of this, and then suggested, at a minimum, who should be informed of this. And I immediately suggested that the Senators who had a keen interest in and a significant knowledge about immigration law should be informed, in my view, but that, in any event, all members would be informed.

In fairness to the nominee, the FBI report was expected within hours, if not a day of the time I was told. As a matter of fact, Senator Hatch and I were having a discussion as to whether or not we could set the hearing for January 11, and the assertion was made to us, at least to me—we weren't together—but what was made is that we thought the FBI report would be in by that time, in plenty of time for everyone to consider it.

It obviously did not come in in that time. In the meantime, there was a second meeting that I had with the nominee, I think on the 12th? Does anybody remember? Find out precisely when it was. A second meeting subsequent to the January 5 meeting, where I once again suggested that I would accommodate trying to get a hold of a number and a colleague in particular, Senator Simpson, because Senator Kennedy had been informed at this point, again, because of the subcommittee's interest in this subject.

Fortunately, very bluntly for the committee, what was in fact disclosed occurred prior to the committee ever getting anything from the FBI, verbally and/or in writing, to the best of my knowledge—I know not in writing, and I believe even verbally there was nothing communicated to us.

Ms. BAIRD. That's right.

The CHAIRMAN. So although it is a distinction made here, it is a distinction with a slight difference, in that there was no attempt to do anything to discourage the nominee from telling anybody she

wished to tell, and it was made clear by me that whether or not it was in an FBI file, that she should assume the world would know this, and she should assume it and, therefore, she should in fact respond by making everyone she could available, to have that information available.

I assume her counsel—and I am making an assumption here—probably was waiting for the FBI report, so there was a context in which you could measure her statements to you against her sworn statements to the FBI. I don't know that.

Ms. BAIRD. That's absolutely right, and I am sorry if I wasn't clear on that, that the—

The CHAIRMAN. As everyone has known in here, but the press understands, we are mildly sensitive about this subject in terms of people being informed, and I am not being critical of you.

Ms. BAIRD. If I could also say, it is very true that neither you or Senator Hatch ever told me not to tell someone. The question simply was how were we going to make sure that the information was brought to everyone, and there were specific people that I should try to tell right away, and then the FBI report would have a complete picture.

Senator HATCH. Well, I think I told you that we ought to get the FBI report and everybody will have access to that. You know, I don't think you were trying not to tell people.

Ms. BAIRD. Thank you.

Senator HATCH. You know, you have been straightforward and above-board in all ways, as far as I am concerned.

The CHAIRMAN. Having said that for the record, shall we say, let me now yield to my friend from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

I am not quite sure I fully understand the point of the last. It was your—well, let me ask it this way: Did you assume that this whole issue was in the background report that was going to be sent either by the transition team or by the FBI to this committee?

Ms. BAIRD. I made sure it was in the report. I raised it with the FBI and talked with them about the matter, yes.

Senator LEAHY. Without asking you to give any of us here undue credit, you would perhaps assume the members of this committee would at least read the FBI report and would see that, whether you brought it to our attention or not.

Ms. BAIRD. No, no. I understood from Senator Biden and Senator Hatch that when the FBI report was ready and you could get the facts to understand the issue, that we would make sure that you knew this issue was in there and that I would also talk with you about it. What happened was that the story became public before the FBI report came here.

Senator LEAHY. The point I am making, Ms. Baird, is that there was no attempt on your part to withhold this from the Senate or anybody else. You are the one that first disclosed this to the transition team—

Ms. BAIRD. Right.

Senator LEAHY [continuing]. And am I correct again that it was your understanding that this was in the reports that were being made available to each member of this committee?

Ms. BAIRD. Yes, absolutely, and I certainly had no intent to withhold it from everyone. In fact, all my inclinations and actions were in the opposite direction.

Senator LEAHY. I mention that, because it has been my experience in the Senate that virtually any nomination that comes up before any committee, the chairman and ranking member always go through the FBI reports. I do in the committee I chair. I know that Senator Biden does on this. Senator Hatch does both in this committee and a former committee on which he served as ranking member and when he was chairman of them.

For whatever it is worth, I just note this for the record for those who want to know how some of these arcane things work in the Senate: It has always been my experience in 18 years here that whoever the Democratic leader is on the committee makes sure that all the Democratic Senators are alerted to it, and whoever the Republican leader is does the same on his side, and in certain instances both the Chairman and ranking member do that, too. In this case Senator Simpson was notified because of his interest in immigration law and so forth.

The CHAIRMAN. Senator, if I could add one more point——

Senator LEAHY. On your time.

The CHAIRMAN. On my time.

Senator LEAHY. I have learned from Senator Feinstein, on your time.

The CHAIRMAN. I am more frightened of Senator Feinstein than I am of you, because you are a chairman and you have to accommodate people, as well. [Laughter.]

All kidding aside, I just want you to know, as well, that I informed the nominee that I was personally calling people myself, whether or not she was calling them to tell them, and I believe there is a number of you I told about this before it broke and before it appeared in the paper and before you saw the FBI report.

Senator LEAHY. I wonder if we might, so I can fully understand some of these aspects, without going into the names of the people—I am not trying to pry into your tax returns or anything else here in public session, but do you have an accountant with whom you regularly consult, say, about tax matters?

Ms. BAIRD. Yes.

Senator LEAHY. And you don't fill out your own tax returns yourself, do you? Do you have an accountant who does that?

Ms. BAIRD. Yes.

Senator LEAHY. Did you consult this accountant about whether you had to pay any of this domestic help social security taxes?

Ms. BAIRD. No; my understanding was that we needed to pay the Social Security tax. What I also understood, though, was that the relationship to the immigration issue was a specialized area and that the immigration lawyer who dealt with this, including the tax aspects of it regularly, was the one who would be informed here. I didn't think to think of including our accountant, who is a general income tax accountant.

Senator LEAHY. The reason I ask—I am having trouble reading my own handwriting, but earlier, if I understand this correctly—earlier today, when you testified, you said that a babysitter you had prior to the couple we have been discussing, the Peruvian cou-

ple, that you had a babysitter who left abruptly, I believe you said, with 2 weeks' notice. Is that correct?

Ms. BAIRD. That's right. I did those tax returns myself.

Senator LEAHY. I beg your pardon?

Ms. BAIRD. I did those tax returns myself.

Senator LEAHY. Now, did you hire that babysitter yourself?

Ms. BAIRD. Yes.

Senator LEAHY. And was that babysitter an undocumented alien?

Ms. BAIRD. No.

Senator LEAHY. And just roughly how did you get that person? Did you go to an agency, advertise, call somebody you knew?

Ms. BAIRD. Well, to show you how difficult all of this is, I found this babysitter through an agency in Ohio and she was from Ohio. I was searching far and wide to try to find somebody to care for my child.

Senator LEAHY. She was not commuting, I assume?

Ms. BAIRD. No; she was not commuting. But I was on maternity leave and I had plenty of time to call agencies all over the country.

Senator LEAHY. Now, with that person, when you paid that babysitter, what did you do, withhold a certain amount and file estimated taxes, Social Security? Just mechanically, what did you do?

Ms. BAIRD. I withheld half the Social Security, as I recall. I haven't looked back at this, but my recollection is I withheld her half of the Social Security and I paid the entire amount of the Social Security for both her obligation and mine, and I also paid unemployment taxes for her. I did not withhold income tax, which I understood not to be required, and I think Senator Biden confirmed that yesterday.

Senator LEAHY. How much was this person paid, roughly the same?

Ms. BAIRD. Yes.

Senator LEAHY. Plus the withheld taxes?

Ms. BAIRD. Well, she was actually paid \$260 a week, so after the taxes came out, she was probably paid less.

Senator LEAHY. But you are required to pay part of that Social Security tax?

Ms. BAIRD. I'm sorry?

Senator LEAHY. Are you not required to pay part of the Social Security tax on—

Ms. BAIRD. That's true. I guess the rate then may have been 14 percent or something like that, and half of that obligation would have been mine, so that's true that I was probably paying her about the same thing when I put back in what I paid for her.

Senator LEAHY. Ms. Baird, it has been reported that telephone calls to Senators' offices have been running at a very unfavorable ratio to your nomination, as these hearings have gone on. Do you feel that you have been treated fairly that way?

Ms. BAIRD. Senator, it is difficult for me to comment on what it is that prompts people to call. I certainly know that, as I have wondered around town, even with the inaugural activities and a lot of people in from out of town, if you are measuring the number of people who started cheering for me, the numbers would look different. I don't know what prompts people to decide to call the Senators and what doesn't.

Senator LEAHY. Do you feel you have been honest and fully disclosed what happened here to this committee?

Ms. BAIRD. Yes.

Senator LEAHY. Do you feel you could be a good Attorney General? I am not tossing that as a softball question. I mean that very seriously. Considering what you have gone through, you are going to be overseeing the INS, you are going to have to require them to have regulations, even internal regulations of what gets enforced and what doesn't, because, as every prosecutor knows, some laws do not get enforced, either from a de minimis nature or because of lack of capability to handle everything, you are going to have to be determining, ultimately at your desk determining what gets enforced and what does not, and you know this will be in your back-ground.

You will have those who will disagree with you on policy issues, either publicly or to your face or perhaps more maliciously in leaks to the press and these individuals will keep reminding people of this. Can you be a good Attorney General?

Ms. BAIRD. Senator, I think I certainly can. I don't in any way feel that any of the difficulty of this process relates to my relationship to these agencies. I am in a public forum, in a hearing where the Senate is legitimately trying to understand how to weigh this experience of mine relative to the rest of my life and the way I will make decisions. It seems to me that is a very separate question. It is certainly a very separate experience from how I will look at the decisions of the Department.

I have said I have made a mistake. It is on a matter that would not generally be enforced. It is on a matter which is a civil penalty. It is on a matter which I think I have in some proportion, and I don't think that will in any way affect the decisions I would make as Attorney General, and I think it would be very regretful, if that was the reason why a Senator felt that he or she might have to vote against me, quite apart from what I did, because I can assure you that it does not affect my judgment and my ability to make the evenhanded judgments that need to be made. If anything, it affirms very publicly my view that the laws need to be enforced evenhandedly against people of all status.

Senator LEAHY. Then let's go to some of those duties as Attorney General, and they are mind-boggling, in a way. After a dozen years or more on this committee, I am constantly looking at new areas that the Attorney General has to go into. I thought I understood them all. I am a lawyer and practiced law prior to coming here. But there is still more and more every day, from the mundane to the very important.

Let's take one of the most important. During the next 4 years, there will in all likelihood be vacancies on the U.S. Supreme Court. The President of the United States gets to nominate whoever will fill those vacancies. He will in all likelihood go first to you, as Attorney General, and ask for recommendations of names, as he will perhaps to others. How do you go about making that recommendation? What are the kind of things that you would look for in making it? To what extent do you feel, under the advice and consent, that there is a need to seek any advice here in the Senate when you make those recommendations?

Ms. BAIRD. Obviously, that is one of the most important recommendations I would make to the President, and it is not enough to say that I would seek out individuals of the highest quality and suggest he consider individuals of diverse race and gender. It is very important, I think, that I consult with others and certainly with those in the Senate to get the judgments of people who have been thinking about these things as to what will make the best judge, Justice, and obviously also names of individuals who might meet those criteria.

A member of this body has said to me in the conversations I have had before this, gee, we really need a practicing lawyer on the Supreme Court, that we have had great practicing lawyers. Well, without that conversation, I might not have focused on whether that was an issue of diversity of a different type that we ought to look at. So the consultation, I think, is very critical.

In the end, it seems to me that we all come down to looking for someone and making recommendations of people who have judicial temperament in the sense of being able to listen to and observe and fairly evaluate the range of ideas put in front of him or her. We look to people who had life experience to understand how decisions made affect people. It is very important that our Justices of the Supreme Court not just make good law, but make good law, knowing how it affects people, so that the subtle expressions of that law are appropriate to the conclusion reached by the Court.

So I think there are a number of these considerations that should be thought out in advance of the search of an individual in consultation with members of the Senate and others, and should be thought through and thought about in terms of how they apply in the context of developing a list of specific nominees.

Senator LEAHY. Let me go on to another area which is related and not related. Three years ago, in my own State of Vermont, a small State, with just over a half million people, yet with the responsibilities of any other State, we had 95 abortion protestors, all but 8 of whom were from States other than Vermont, come to Vermont really intent upon closing down our whole Vermont judicial system—civil disobedience, blocking abortion clinics, and on and on. It created a tremendous mess. We totally overloaded our courts in a short period of time.

In a similar case in Wichita, then Attorney General Barr took the position that ensuring access to clinics is not an issue that belongs in the Federal court, regardless of the willingness or, probably even more important, regardless of the ability of the local authorities to guarantee access.

Now, in the *Bray* case, Justice Kennedy pointed out in his opinion—and I understand the Attorney General has the authority to place Federal resources at the disposal of State authorities in order to enforce the law. As Attorney General, you could well get a call from the Federal authorities in Vermont, or Delaware or anywhere else, saying we have a situation like the one I have described in Vermont. Our State courts are going to be closed down; they are going to be overwhelmed; we want Federal resources, which might even include Federal marshals to protect access to these clinics.

What are your feelings on that? I know you discussed the *Bray* case a little bit in an earlier question, but I am not sure I fully understand how your answer applies in this case.

Ms. BAIRD. No; this is a different issue.

Senator LEAHY. Yes.

Ms. BAIRD. Well, this is a different issue. The question there was what legal actions we might bring to assure the access to abortion clinics. You are talking about whether we should use forces, as I understand it.

Senator LEAHY. That is right.

Ms. BAIRD. I mean protective guard. It is not an issue that I have thought about. I would hope that we would be able to address it in a way short of that, because I think it is critical that we do protect the access to clinics in order to make real the choice that we say is a right. I would hope we would be able to do it short of having to take that kind of step, but I think it is important, as you point out, that we look hard at the issue and know what we would do if it becomes necessary.

Senator LEAHY. I should tell Senator Brown that even though the red light went on, Senator Biden had used a couple of minutes of my time. I just want to make sure I fully understand this. Are you telling me that in the case of such protests at an abortion clinic—I use that very specifically rather than generically, any type of protest—that under the appropriate circumstances it may well be a case where Federal resources could be made available at the disposal of State authorities in order to enforce the law?

Ms. BAIRD. What I was saying was I really don't know the answer to that. I would have to look at it and study it and see what the authority is. I don't know the answer to it, but I can say in answer to your question that I think we should use Federal resources, whether it is lawsuits or other actions. I can't tell you whether Federal law enforcement resources are appropriate because I am not familiar with the law, but I am very committed to the notion that the Federal Government needs to preserve the access. And the question then is can we bring—for example, I mentioned earlier today the idea of antitrust—excuse me, not antitrust—civil rights actions that have a conspiracy element, you know, a conspiracy to deprive civil rights when these other legal actions may not be available. But it is something that I think we need to look at to see what is the range of creative tools we might use in order to preserve these rights.

Obviously, if we have a range of creative tools we have identified at our disposal, we may have a real deterrent effect to people even trying to block access. And my comment was simply that I would hope we wouldn't get to the question, but we ought to analyze it up front so we know what we would do.

Senator LEAHY. Thank you, Ms. Baird.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Earlier in our proceedings on Tuesday, our distinguished chairman of the committee was kind enough to take cognizance of my concern that a form may well have been required with regard to Federal income tax withholding. It is certainly, I think, a significant area here because if, indeed, Federal income tax had been

withheld, then, indeed, the Federal Government would not have been shortchanged with regard to income taxes due them from the undocumented immigrants.

At that time, the chairman specifically quoted title 26 of the United States Code, section 3401 and the appropriate subsection of that code. However, he did not take cognizance or note at the time of section 3121(a)(7)-1(a)(2), a well-known section, and revenue ruling 58-580 that indicates that this regulation may well apply here as well.

I note it because my hope is that the chairman will have a chance to review this and perhaps reconsider his view that, indeed, the proper ruling here may well be that this withholding requires.

I might simply say that this section of the regulations deals specifically with domestic service in the private home of the employer, and it makes it clear that chauffeurs of automobiles for family use are not exempt from the withholding requirement unless such services are performed in or about a private home of the employer.

That language is specific. I think it deals with current circumstances. If, indeed, the responsibilities involve driving people to and from jobs or outside of the home, then, indeed, withholding was required, and I submit this for the record and look forward to an opportunity to discuss it further with Chairman Biden.

Senator LEAHY [presiding]. We will put it in the record.

[The information follows:]

code of federal regulations

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§ 31.3121(a)(5)-1

worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3121(a)(5)-1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

(a) *Payments from or to certain tax-exempt trusts.* The term "wages" does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust.

If at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages.

(b) *Payments under or to certain annuity plans.* (1) The term "wages" does not include any payment made after December 31, 1962—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan, if at the time of such payment the annuity plan is a plan described in section 403(a).

(2) The term "wages" does not include any payment made before January 1, 1963—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan meets the requirements of section 401(a)(3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term "wages" does not include any payment made after December 31, 1962—

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(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

[T.D. 6876, 31 FR 2596, Feb. 10, 1966]

§ 31.3121(a)(6)-1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3121(a)(7)-1 Payments for services not in the course of employer's trade or business or for domestic service.

(a) *Meaning of terms—(1) Services not in the course of employer's trade or business.* The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Such term does not include services performed for a corporation. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home of the employer. See paragraph (f) of § 31.3121(g)-1 for provisions relating to services not in the course of the employer's trade or business performed on a farm operated for profit.

(2) *Domestic service in a private home of the employer.* Services of a household nature performed by an employee in or about a private home of the person by whom he is employed constitute domestic service in a private home of the employer. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an indi-

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vidual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The term "domestic service in a private home of the employer" does not include the services enumerated above unless such services are performed in or about a private home of the employer. Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's home, are not included within the term "domestic service in a private home of the employer". As used in this section, the term does not include domestic service in a private home of the employer performed on a farm operated for profit or service not in the course of the employer's trade or business. See paragraph (f) § 31.3121(g)-1 for provisions relating to domestic service in a private home of the employer performed on a farm operated for profit.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash (1) for service not in the course of the employer's trade or business, or (2) for domestic service in a private home of the employer. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, for service not in the course of the employer's trade or business or for domestic service in a private home of the employer does not constitute wages.

(c) *Cash payments.* (1) The term "wages" does not include cash remuneration paid by an employer in any

calendar quarter after 1954 to an employee for—

(i) Domestic service in a private home of the employer, or

(ii) Service not in the course of the employer's trade or business,

unless the cash remuneration paid in such quarter by the employer to the employee for such service is \$50 or more.

(2) The test relating to cash remuneration of \$50 or more is based on the remuneration paid in a calendar quarter rather than on the remuneration earned during a calendar quarter. It is immaterial whether the remuneration was earned before 1955 or after 1954.

Example. In the calendar quarter ending March 31, 1955, employer X pays employee A cash remuneration of \$50 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though \$10 thereof represents payment for such service performed by A for X in December 1954.

In determining whether \$50 or more has been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar quarter for both types of services the \$50 cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar quarter for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the \$50 cash-remuneration test is to be applied separately to the remuneration received from each employer. See § 31.3102-1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the

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other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

[T.D. 8324, 55 FR 51698, Dec. 17, 1990]

§ 31.3401(a)(1)-1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.

Remuneration paid for active service as a member of the Armed Forces of the United States performed in a month during any part of which such member served in a combat zone (as determined under section 112) or is hospitalized at any place as a result of wounds, disease, or injury incurred while serving in such a combat zone is excepted from wages and is, therefore, not subject to withholding. The exception with respect to hospitalization is applicable, however, only if during all of such month there are combatant activities in some combat zone (as determined under section 112). See § 1.112-1 of this chapter (Income Tax Regulations).

§ 31.3401(a)(2)-1 Agricultural labor.

The term "wages" does not include remuneration for services which constitute agricultural labor as defined in section 3121(g). For regulations relating to the definition of the term "agricultural labor", see § 31.3121(g)-1.

§ 31.3401(a)(3)-1 Remuneration for domestic service.

(a) *In a private home.* (1) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private

home, and the remuneration paid for services performed therein is not within the exception.

(2) *In general,* services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Remuneration paid for services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed is excepted from wages and hence is not subject to withholding. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the remuneration paid for services performed therein is not within the exception.

(2) *In general,* services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Remuneration not excepted.* Remuneration paid for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, is not within the exception. Remuneration paid for services of a household nature is not within the exception if performed in or about rooming, or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

SECTION 3121.000 DEFINITIONS.

26 CFR 31.3121(a)(7)-1: Payments for service not in the course of an employer's trade or business or for domestic service.

(Also Section 3401; 31.3401 (a) (3)-1.)

1958-2 C.B. 723; 1958 IRB LEXIS 126; REV. RUL. 58-580

July, 1958

[*1]

Service performed by an individual in and about the private home of his employer in the care and maintenance of a house bus for family use and in driving such bus to and from the home of the employer on pleasure trips constitute "domestic service" for purposes of the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages.

Liability is incurred for the taxes imposed under the Federal Insurance Contributions Act for each quarter in which the individual is paid cash remuneration of \$50 or more for such service. No liability is incurred by the employer for the withholding of income tax on wages paid to the individual for such service, by virtue of section 3401(a)(3) of the Internal Revenue Code of 1954.

Advice has been requested whether services performed by an individual in caring for and driving a house bus for family use constitute "domestic service" for purposes of the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages (chapters 21 and 24, respectively, subtitle C, Internal Revenue Code of 1954).

The owner of a bus had it converted to a house bus or "land cruiser" with complete living accommodations, for use [*2] by his family in taking pleasure trips. The bus was licensed for private use rather than for commercial purposes and was usually garaged on the home premises of the owner. An individual was hired to care for and drive the bus. His primary duties consisted of caring for and driving the bus to and from the home of the owner. When not on the road, his duties were essentially those of a caretaker and housekeeper for the bus. He performed no other services for the owner during such periods. While on the road, he served as driver and housekeeper and made emergency repairs when necessary. Approximately one-sixth of his time was devoted to driving the bus to and from the home of the {724} owner. The driver was paid a straight salary and was hired on a full-time basis in order to have his services available when needed. He was not required to keep regular hours when not on the road, but was subject to call at all times.

Section 3121(a)(7)(B) of the Federal Insurance Contributions Act excepts from the term "wages" cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such [*3] quarter by an employer to the employee for such service is less than \$50. Under section 3401(a)(3) of the 1954 Code, relating to the withholding of income tax, the term "wages" does not include remuneration paid for domestic service in a private home.

Section 31.3121(a)(7)-1 of the Employment Tax Regulations provides that the term "domestic service" includes services of a household nature performed by an employee in or about a private home of the person by whom he is employed. In general, services of a household nature in or about a private home include, among others, services performed by housekeepers, handymen and chauffeurs of automobiles for family use. The foregoing definition of "domestic service" is equally applicable for purposes of the Collection of Income Tax at Source on Wages.

The information presented discloses that the bus was used for pleasure rather than for commercial purposes and that the duties of the driver included the care of the bus as well as driving it to and from the private home of his employer. The fact that the greater part of his services was spent in or about the home of the employer indicates that such services were similar to those performed [*4] by a chauffeur. Only a minor part of his services were such as are not commonly expected of a chauffeur.

Accordingly, it is held that the driver's services constitute "domestic service" within the meaning of section 3121(a)(7) of the Federal Insurance Contributions Act and section 3401(a)(3) of the Internal Revenue Code of 1954. Therefore, liability for the employer and employee taxes imposed under the Federal Insurance Contributions Act was incurred for each calendar quarter during which cash remunerations paid to the employee by the employer for such services amounted to \$50 or more, but no liability was incurred by the employer for the withholding of income tax with respect to any remuneration paid to the employee by virtue of the exception provided in section 3401(a)(3), supra.

Senator BROWN. Thank you, Mr. Chairman. I also have some additional questions, and, Ms. Baird, you are kind to stay on. We all appreciate that you have had quite a long day with this.

I wanted to return to some of the questions that I had asked on Tuesday. My purpose of asking those questions was to address a concern I had. It seemed to me that there was a difference in a violation of a law or a requirement, if you knew about it, then it was quite different than if you didn't know about it. We all, of course, appreciate the legal fiction that everyone has attributed knowledge of these. In reality, I don't suppose there is anyone who believes that is actually true, and certainly in my own mind of assessing the gravity of the failure to comply with these regulations, it makes a great deal of difference to me whether or not someone knew about it.

You did address specifically the infraction of hiring an illegal alien. I wanted to go back to some additional areas, though, that at least in reviewing the testimony I felt were not clear. To be fair, I will also try and indicate what you said, and certainly if you would want a copy of it, it is certainly appropriate. But I think they are all pretty straightforward.

The first question that I asked was with regard to the I-9 form; that is, the employment verification form that the Federal Government requires to be filled out on all employees. I would ask whether or not you knew it was a violation of the law to not have filled that out at the time. Your answer says:

My assumption is that there were forms that should have been filled out for a legal worker that could not be filed for someone who didn't have their papers.

I guess my question is: For someone who didn't have their papers or who was illegal, were you aware that you were still required to complete the I-9 form?

Ms. BAIRD. No.

Senator BROWN. You were not aware of that?

Ms. BAIRD. No.

Senator BROWN. I simply might mention, you did fill out an I-9 form when you went to work for Aetna, I assume?

Ms. BAIRD. I assume I did.

Senator BROWN. Section 1 of the instructions at the top of the page, where the instruction says this:

Employee: All employee citizens and noncitizens hired after November 6, 1986, must complete section 1.

It goes on to point out in darker letters:

The employer is responsible for ensuring section 1 is timely and properly completed.

The second area that I was concerned about was with regard to the payment or the responsibility to pay Social Security taxes, and your response was this:

That, too, I assumed we were not paying until they got their Social Security numbers.

And I guess my question was: Were you aware that you were required to pay the Social Security taxes whether they had numbers or not?

Ms. BAIRD. My understanding—and this is confirmed in the letter that we have made available from Mr. Belote. My understanding was it was not possible to pay if they didn't have numbers.

Senator BROWN. That is clearly not the law. As a matter of fact, the statutes and regulations specifically address it and require the payment, the filing, even if they don't have numbers.

Ms. BAIRD. As I informed the committee, when I became—after I was designated to be Attorney General and became connected with the transition, a lawyer with the transition advised us that it was possible to pay the taxes, and so we went ahead and did that right away, including the interest and penalties.

Senator BROWN. I assume that is the same case with regard to the withholding as well as the payment, the withholding of Social Security.

Ms. BAIRD. Both sides of the Social Security, yes.

Senator BROWN. With regard to unemployment taxes, let me quote your response:

I was aware that there was a requirement to pay unemployment tax, and that was a tax we intended to pay when they got Social Security numbers. My understanding was that that was one of the taxes, along with the Social Security tax, that we were not able to pay until the Social Security numbers.

So here, also, it was a matter of not believing that you were required to pay that until they got the numbers? Or more correctly, I guess, believing that you didn't have to pay it until they got their Social Security numbers?

Ms. BAIRD. No; with respect to both the Social Security tax and the unemployment tax, I knew that we were required to pay it and we intended to pay it when they got their numbers with interest and penalties. We had tried to find a way, as I explained, to pay the taxes earlier and had been advised that it wasn't possible.

Senator BROWN. But you were not aware that you had an obligation to pay it whether they had numbers or not?

Ms. BAIRD. No; as I said, my understanding was—I am not sure I understand the question. If—

Senator BROWN. Well, I guess the question is this—the response I got was that you intended to pay it—

Ms. BAIRD. Right.

Senator BROWN [continuing]. And that you were going to wait until they got the numbers to pay it. My question is: Were you aware of the fact that the law requires you to pay it whether they had numbers or not?

Ms. BAIRD. My understanding was that we were required to pay Social Security and unemployment tax for these people, but that it was not possible to pay it until they got their numbers.

Senator BROWN. So you were not aware of the fact that you had to pay it even though they didn't have numbers? You relied on your attorney's advice in that regard?

Ms. BAIRD. Right.

Senator BROWN. I don't mean to put words in your mouth.

Ms. BAIRD. No, no. I understand. I am just trying to answer the question.

Senator BROWN. With regard to the W-2 form, you said:

First of all, I thought it was required. I am really not sure whether it was required, and I will just have to confirm your understanding that it wasn't provided.

Actually, there was some extended discussion here. I guess my question in reviewing the transcript was: Are you telling us that you didn't know that you had to provide W-2 forms, or that you didn't know whether one was in reality actually provided?

Ms. BAIRD. Senator, I go back here to the fact that my husband was handling this, and as this was being handled, I wasn't focusing on whether at each stage the things that might have been done were or were not being done.

I think what I was expressing there was that I didn't know whether or not a W-2 form was provided.

Senator BROWN. Were you also aware that a W-2 was required to be provided?

Ms. BAIRD. I had certainly provided a W-2 to the person whose employment I had handled before that, the babysitter that I had handled before that.

Senator BROWN. Good. I think that is helpful, and that completes that section.

I have some questions that Senator Dole had asked me to ask, and I think we had tried to provide copies to your folks yesterday. I suspect that you have been deluged with—

Ms. BAIRD. Yes; I haven't seen them, but I am happy to try to answer them.

Senator BROWN. Obviously, if there are any of these that you would prefer simply to respond in writing to rather than right now, I would certainly understand and be happy to handle it that way. But while we have a few minutes, let me go through the ones that I do have.

The first question relates to a series of articles that the Washington Post ran last week regarding prosecutorial power and the misuse of prosecutor power.

First of all, with all the busy things you have been doing, did you have a chance to see that series of articles in the Washington Post?

Ms. BAIRD. I did see the series, yes. I can't tell you I read them carefully, but I did read them.

Senator BROWN. This is not intended to be a quiz on the articles, let me assure you. I would think any quiz on articles in the Washington Post might be unfair.

I must say, I think on the one hand it is important to pursue and prosecute illegal conduct to the fullest extent of the law. On the other hand, the very foundation of our judicial system rests on the notion of fairness and impartiality in the pursuit of justice. With that background, what I am concerned about is in this connection: What are your views regarding the role of a prosecutor and the ethical and legal standards to which a prosecutor must adhere in order to avoid overzealous behavior and misconduct?

Ms. BAIRD. I think it is critically important that that balance be right. I think that requires leadership from the Attorney General, and I think it requires a commitment throughout the ranks of any prosecutorial organization.

Prosecutors will lose their credibility if they are overzealous, and the country will be disserved. The question that the Senator raises is very, very important, and it is a matter to which I would make a real commitment as Attorney General.

Senator BROWN. I appreciate your sensitivity on that matter. You may recall the articles were fairly critical of the Office of Professional Responsibility that is within the Justice Department. They are charged, of course, with investigating alleged misconduct. Some of the proposed reforms that have come up have included, first of all, ending the total secrecy with regards to the disciplinary process of prosecutors and also increasing the size of the staff within the OPR.

What is your view, I guess, with regard to these proposals?

Ms. BAIRD. Senator, I would need to look at that and would commit to you to do that and to talk with the Members of the Senate who have had experience or views in this regard. I think I really would need to look at exactly how OPR is functioning and how they have handled particular cases before I made a judgment.

Senator BROWN. I can appreciate that. I want to say, personally speaking, I have some concern about the secrecy involving the disciplinary process. It seems to me that it has the potential of covering up or hiding misconduct when the disciplinary process itself is secret.

Do you have a view you want to express on that?

Ms. BAIRD. I understand that point of view, and, of course, there is the other side which is intended to protect someone who is investigated. And I really would need to look at how the OPR has proceeded and the purposes for the secrecy and where it is applied and whether there are alternatives to it that can accommodate both interests. And I would need to look at that before having a view on it.

Senator BROWN. I wanted to direct your attention to the independent counsel statute that has come up before in this process. As you know, it expired in December, and I think it is likely to be brought up in debate in reauthorization later this year. Part of that controversy surrounds the Office of Independent Counsel Lawrence Walsh, including the allegations of overzealous behavior and misconduct.

Since the pardons were an issue on Christmas Eve, Mr. Walsh as an independent counsel took to the airwaves of CNN and Nightline to not only denounce the pardons, but to accuse President Bush of misconduct to suggest that he is the subject of an investigation and to talk about the missing notes and depositions.

I believe that is an accurate description of the prosecutor's conduct. The question, I guess, is: Do you believe that his conduct was appropriate?

Ms. BAIRD. Senator, I would rather not comment on the statement of someone who is still conducting an inquiry. What I can say about this is, as a broader proposition, I have already thought of how we might address this question of prosecutors generally using press conferences to make statements rather than just the courtroom. I think that it is a broader problem, and I could cite you other examples of circumstances where U.S. attorneys have announced indictments to press conferences. And I find that troublesome because I think that a lawyer is to make his case in court, and while there are important considerations that apply only to a public prosecutor, deterrent effect and some other considerations, it seems to me that to the extent those considerations are satisfied,

it has to be done in a very careful way, for two reasons: one, to assure the fairness of the process to the criminal defendant; and, two, to preserve the public confidence that prosecutions are not being carried out for the personal political interest of any given individual or for the personal pique of any given individual.

So I think you have identified a very important issue and one that I would hope to work on very carefully in the guidelines for prosecutors, U.S. attorneys, and those in Main Justice. I think it is very, very important, and also, of course, for the independent counsel which, as you know, are at least to some extent held to—or asked to look to the guidelines that govern Justice Department prosecutors even though they are independent counsel. And it may well be that that is one area where we need to try to strengthen their tie to the Justice Department guidelines.

Senator BROWN. I see my time is up. Let me simply make an observation, if I could. I take it, then, a prosecutor who goes on CNN to make his case rather than in the courtroom is an example of the kind of conduct you don't condone.

Ms. BAIRD. The general proposition troubles me, yes.

Senator BROWN. Thank you. Thank you, Mr. Chairman.

Senator LEAHY. I might tell my friend that I concur with him on that. I think that that is not—the prosecutor has got enough to do in court without taking time to do it in—I have been advised by Senator Biden's staff, Ms. Baird, that you would like a short recess. Can we accommodate you with, say, about a 5-minute recess?

Ms. BAIRD. That would be fine. Thank you.

Senator LEAHY. Senator Heflin, who has been here as patient as any person could conceivably be, other than yourself, is waiting to ask questions and will be recognized when we come back from the break.

Ms. BAIRD. Thank you.

Senator LEAHY. We stand in recess.

[Recess.]

Senator LEAHY. The committee will come back in session, and again, as we have said, the Senator from the western New England State of Vermont thanks the Senator from the eastern State of Maine for the help with the gavel. I should have done that before.

The witness is back. We will continue on. Again, I would note, as Senator Biden said earlier, that we will continue as long as the witness wishes to stay this evening. We have a number of Senators who still have questions. But obviously the witness has been here long beyond the time that we had suggested earlier we might be here.

Ms. Baird, if at any time you feel that you have answered enough for today, for whatever reason, let us know and we will finish with whatever person is questioning at that time, and put it over until tomorrow.

Ms. BAIRD. Thank you.

Senator LEAHY. I yield to Senator Heflin.

Senator HEFLIN. Let me first say I think you have answered questions rather forthrightly, and you have, I think, properly answered questions pertaining to many issues that will be coming up in the Department of Justice if you are the Attorney General, or whoever is the Attorney General there.

I want to ask a number of questions that I am still confused in my mind about—I feel that there are gaps pertaining to the alien couple that worked for you. But I do have one question that I don't want to miss, and I think I would be remiss if I didn't ask it.

We understand that about 70 percent of the moneys spent on the war against drugs is in connection with interdiction—keeping drugs from coming into this country. We know cocaine is a primary problem and that cocaine is produced only in Central and South American countries.

In a 1991 report of the National Narcotics Intelligence Consumers Committee, they made a great number of findings including this: Colombian and Mexican traffickers continue to dominate distribution in primary as well as secondary market cities. With the advent of the Colombians paying Mexican transportation groups in cocaine, Mexicans increased their involvement in the wholesale distribution of cocaine in the United States throughout 1991.

Now, under the North American Free Trade Agreement, there are provisions that appear to indicate that Mexico would allow foreigners to invest in their trucking firms and buses, and that truckers with international cargo would be given open road throughout the continent. You hear sometimes of the Daytona 500. If that interpretation is right, we could have Cocaine 5000.

Now, it seems to me that if the North American Free Trade Agreement has such provisions, subject to that interpretation, that the Department of Justice ought to take a very careful review of this and certainly any of the efforts on the part of the President to look into it and perhaps renegotiate or make side agreements. I will ask you, if you are the Attorney General, will you look into that?

Ms. BAIRD. It certainly seems to be something that we should look into. I wasn't familiar with the issue before, but would certainly make sure we did that as the administration is considering whether there are provisions of the North American Free Trade Agreement that ought to be renegotiated.

Senator HEFLIN. I have a copy of the form by which the certificate for the Department of Labor was sought in regard to the babysitter, and it appears that she had a college education, or at least she went to a college in Lima, Peru, from 1983 to 1987 and studied business administration and prior to that she had gone to a metropolitan college in Lima, Peru, and had studied in regard to secretarial skills. She seemed to be fairly well educated. Did you find this individual to be very competent and intelligent? How did you find her pertaining to her educational background? Of course, I realize in Peru perhaps it is different from ours.

Ms. BAIRD. Right.

Senator HEFLIN. How did you find this person to be?

Ms. BAIRD. You are right that the educational background in Peru is different, but she was a very bright person who had had a lot of child care experience and was very sweet and loving.

Senator HEFLIN. I have a copy here of the New Haven Register about your ad that you ran, and it reads:

Child care nanny, live-in nanny for 7-month-old boy in warm family setting, light housekeeping, cook dinners, long-term position with appreciative family in beautiful

home, nonsmoker, driver, citizen or green card only, require child care references, call

—and then it has a number—

leave message describing yourself and give telephone number. Married couple also considered if spouse experienced as handyman/gardener.

Did you have many responses to this ad?

Ms. BAIRD. My husband handled this, but my recollection is that the answer is no.

Senator HEFLIN. We had some information that you flew a couple in from Texas at your expense to interview relative to this position. Is that correct or incorrect?

Ms. BAIRD. We flew two different individual women in from Texas. We did interview at least one other couple, but I don't think they were people who came in from that far away.

Senator HEFLIN. Were they seeking the job?

Ms. BAIRD. The people we interviewed? The first woman we brought in from Texas decided after she met us and learned that we were Jewish that she didn't think she would feel comfortable working in a Jewish home.

The second woman had no child care experience. We had hoped to hire her, but we were anxious once she got there that without the child care experience and she had never lived anywhere other than Texas, that we wouldn't—that my son would become attached to her and she would decide she didn't like the job and would leave like the person who we had already had from Ohio. And we decided that that didn't make sense.

It is obviously a difficult situation when someone comes that far from their home to live in a new environment in someone's home caring for a young baby to know whether or not they would be likely to stay. But in that circumstance, since she hadn't had any child care experience before, we just weren't comfortable that it wouldn't again be another disruption, which I didn't want for my son.

Senator HEFLIN. Were there any applicants who were turned down because they were smokers?

Ms. BAIRD. I don't recall. There may have been.

Senator HEFLIN. Were there other applicants that you could have hired other than this couple at the time you decided to hire them?

Ms. BAIRD. There weren't any other applicants who met the criteria that we wanted for our son. I mean the smoking issue was not for us, it was that I didn't want someone around my son who was a smoker and to have him be secondarily inhaling the smoke, and the experience requirement was all related to trying to find some consistent care, because I felt that it would be very damaging for him. I just didn't feel comfortable leaving him in a situation where there was constant turnover of the person who would be taking care of him.

I don't know how to explain that to you, other than to tell you that I think that it is a generally accepted notion that a child needs consistency, particularly since I was away from home as much as I was, it was important to me to try to find some kind of consistent caretaker for him that he could, in the parlance, bond with and feel connected to and supported by. So these were all considerations in trying to find someone appropriate.

Senator HEFLIN. Well, is it fair to say that in reviewing the applicants for the job, that you felt that there were material differences between this couple that you employed and other people at the time?

Ms. BAIRD. Well, I felt that this Peruvian woman would provide him with consistent care, that she would stay with the job and that she would be a very loving caretaker for him and someone who had a lot of experience and knew how to handle a child and could handle and help him through his developmental experiences as he grew, someone who would know not just how to change a diaper, because I showed her, but who had enough experience with children to understand what the unstated signals meant when she was trying to figure out how to comfort him or help him grow or help him be happy.

Senator HEFLIN. Did this individual's background involve child care work in several places, and various duties dealing with young children? And didn't she assist a teacher with a class of 7-year-old children at a parochial school? Was her background such that you felt that she had a good deal of experience in this—

Ms. BAIRD. Yes.

Senator HEFLIN [continuing]. And that she was superior to other applicants?

Ms. BAIRD. Yes.

Senator HEFLIN. Now, let me ask about your income tax relative to these matters. The time sequence appears to maybe raise some questions. There is a question in regards to whether the discussion with Mr. Belote was in June or July 1990, or whether it was in November 1990, some 4 months difference. There also is the possibility that other lawyers, as you have mentioned, could have been consulted, and I understand that one of the other lawyers states he can't remember, but he indicates that you had not employed this couple that you were contemplating hiring them. So it could be that there were other lawyers other than Mr. Belote that were questioned.

Regardless, on April 12, your husband made a phone call to Mr. Belote in which your husband said he wanted to talk to him. He didn't get to talk to him until, I believe, April 20. Now, did you file your income tax on April 15, or was it later, or do you remember relative to your 1990 return, which would have been due to be filed on April 15, 1991?

Ms. BAIRD. I don't remember. I assume that we filed it on time, but I don't think that this issue was relevant to our income tax. The tax obligation—

Senator HEFLIN. Well, let me point out why it might be relevant, and it is a matter of some judgment that you made. Under the income tax return, there is a provision dealing with dependent child care tax credit. According to my calculations, the amount you paid in salary, for child care, should have entitled you to a tax credit of around \$2,600. Was there any discussion as to why you did not wish to claim a child care tax credit?

Ms. BAIRD. Senator, my assumption has been that that tax credit only applies to people up to a certain income level and that we exceeded that income level.

Senator HEFLIN. Well, although the amount may decrease with a higher income, it is my understanding, and it may be incorrect, that one is entitled to a tax credit based on 20 cents on the dollar for the amount that is paid above a certain level.

Ms. BAIRD. It was certainly my belief that our income was too high to take the credit.

Senator HEFLIN. So the decision on the question of claiming a child care tax credit was under the idea that you couldn't claim it, that you weren't entitled to it?

Ms. BAIRD. That's right.

Senator HEFLIN. Now, there are certain other factors that become involved in this. One is, I understand, a bank account relative to this couple or to the lady that was the babysitter, that she had to have a Social Security number in order to take out a bank account, or at least in a bank account there has to be one Social Security number that is given. In the bank account for this lady, your husband and she had a joint account and he supplied his Social Security number. Was there any discussion that you had with your husband relative to the opening of a bank account?

Ms. BAIRD. No.

Senator HEFLIN. Mr. Belote, of course, advised you that you couldn't pay the Social Security. However, according to a press release by the Internal Revenue Service, March 24, 1988, the Internal Revenue Service as of that date advised illegal aliens and advised employers that you could provide on the tax returns and on forms that had to be filled out the letters SSA205(c), and that meant that you could then withhold the tax, pay it to the Government, and that would identify and be used in place of a Social Security number.

And the provisions also relative to this release were that the IRS emphasized that no information from any taxpayer's Federal income tax return can be shared with other persons or Government agencies without the taxpayer's consent.

Now, it is a little confusing from what I have found from the investigation, but Mr. Belote indicates that he sent some form of a press release from the Internal Revenue Service to your husband relative to the matter pertaining to the Social Security deductions. We understand it may have been pertaining to escrow accounts that you could have had pertaining to this. Do you remember any discussion with your husband or anything pertaining to the receipt of some sort of a ruling that the Internal Revenue Service had published?

Ms. BAIRD. Senator, I don't. I do recall my husband saying that he was continuing to explore at some point in time, and I do remember when, that he was continuing to explore whether there was any way that we could pay the taxes, even though the advice he had gotten from at least two lawyers was that it was not possible to pay them until they got Social Security numbers.

And one of the things that my husband raised with Mr. Belote was whether it was possible to set up some kind of escrow account, even if the Treasury wouldn't take the dollars in, so that at least we could affirm that they were being set aside and that they would be there and available, in case there was some change in the ability to pay them or at least when we were able to pay them when

the Social Security numbers were obtained, and that way, also, the Treasury would just know more firmly than we have been able to demonstration through simply saying we paid by check, that we intended to pay these taxes.

It may have been that in that context, Mr. Belote sent them some kind of letter. I can tell you that it was as recently as January 5 when Mr. Belote confirmed his advice, that it was not possible to pay the taxes, though we knew that we owed the taxes, and so I don't believe that if he had sent some letter like that earlier that he had changed his advice.

Senator HEFLIN. Thank you.

Senator LEAHY. Thank you, Senator.

Senator Cohen of Maine is next. I would urge, and sometimes breaks this rule myself, we will try to keep within the time. Obviously, the witness, in answering a question, can complete the answer as much as she feels she should, but because of the hour and with so many—Senator Cohen, incidentally, is one who always follows the rule, I should emphasize.

Senator COHEN. Almost always. Thank you, Mr. Chairman.

Ms. Baird, let me say that those of us who have been the beneficiaries of Senator Heflin's aromatic cigar smoke fully appreciate your sensitivity about secondary smoke inhalation. [Laughter.]

Ms. BAIRD. Thank you.

Senator LEAHY. That is true. [Laughter.]

Senator COHEN. Do not deduct this from my time, please.

The Senator from Vermont earlier talked about the mail and the calls that are running heavily in opposition to your nomination, and you are perplexed about it. I think a number of people are concerned about the intensity of the phone calls which is almost unprecedented. These phone calls and letters are important. They are not decisive, but they are important.

Yesterday, I listened to President Clinton give a very good speech in which he said let's listen to the people who have sent us here. We on the committee must listen to the people who have sent us here and seriously consider the opposition to your nomination.

Some people are angry, I think, about the violation itself, a sort of per se argument. This is absolutist, tempering mercy with justice, instead of the other way around. Some of my colleagues have already announced their position before all of the evidence is in, because they have strongly believe that if you break the law, you do so at your peril.

By the way, I am told—I am not sure this is true or not, but I am told the Justice Department takes this kind of absolutist position with people who apply for employment. If an entry level employee found himself in a similar situation, he would be automatically disqualified, without taking into account any mitigating circumstances. If you are confirmed, it seems to me this policy would have to be altered to consider cases on an ad hoc basis in order to comport with your situation.

Some opponents of your nomination see this as a class issue, that the rich are treated differently. You yourself have indicated that the rich are treated differently. You are paying the fine, where ordinarily it wouldn't be paid. But if you weren't the nominee for At-

torney General, you probably wouldn't have to pay it. So by virtue of your position, you are treated differently.

Some have a political agenda. Some see you as a corporate attorney who has had a very successful but narrow career in corporate law, and they believe that you would not be able to help bring about justice for those at the lower end of the economic and social ladder. I don't accept that.

I recall when John Kennedy named Robert Kennedy, his brother, to be Attorney General. I don't know what experience he had at the time. I believe he was a staff director in the Senate, but I doubt very much whether he had the experience that you bring, and yet he was an outstanding Attorney General. I don't accept the argument that just because you have had a narrow career at the very top of your profession, that you wouldn't make an excellent Attorney General.

Some still resent the manner in which some Republican nominees were treated in the past, who were either rejected outright or forced to withdraw. I must tell you, I have no political agenda. I have always tried to support Presidential nominees to the best of my ability.

I recall with some anguish what happened to John Tower. In my opinion, he was unfairly treated. He was rejected for Secretary of Defense, based upon allegations of conduct that occurred years before in the 1970's and late 1970's and possibly in 1980. There were allegations of misconduct which many felt was inappropriate and rendered him unfit for the position. There were no allegations of illegal activity, but simply inappropriate conduct which didn't measure up to the position.

Some in this body have urged that we apply the Tower rule but as fond as I am of his memory and my relationship with him, I will not do so.

I think the country wants us to stop the rock throwing, and I don't want to engage in it. I have tried to reserve judgment until this hearing is completed and the record is complete. However, I must tell you that no matter what happens, your confirmation is going to create problems.

For example, earlier today I was handed a copy of an article that appeared in the San Diego Tribune. It talked about a person who was tried for transporting undocumented workers. The trial ended with a hung jury and the prosecutor may move for a new trial. The defense is now citing your situation as a basis for dismissal. This issue is going to be a continuing problem for you to deal with and for us to deal with, if you are confirmed.

Earlier, Senator DeConcini asked you about 100,000 police in the streets, and you said you talked with others during the course of the Presidential campaign. When did you sign on with the Clinton campaign? Was it back in the spring? Was it after the convention? When did you become active in the Clinton campaign?

Ms. BAIRD. I believe what I said is I talked with others who had been involved in the campaign.

Senator COHEN. You were not involved?

Ms. BAIRD. No, I had very modest involvement in the campaign, just a few things this fall.

Senator COHEN. OK.

Ms. BAIRD. May I go back and address some of your opening comments for just a minute?

Senator COHEN. Do it at the end, because then you can talk at length and it won't count against my time.

Senator LEAHY. That is called the Leahy rule, Ms. Baird, and he is taking full advantage of it.

Senator COHEN. Let me just go on, and then you can have 10 minutes to respond to the issues I raised.

I focused earlier upon the issue of the housing association problem in New Haven, and I will tell you why. Republicans have historically been characterized, unfairly in my judgment, of being insensitive to the disabled, minorities, and the disadvantaged. I believe that is an unfair characterization. I, along with other Republicans, have fought very hard for individuals, minorities, the disabled, and the disadvantaged. That is why I focused on that story and when you or your husband became aware of it.

Earlier today, you indicated that you became aware of that whole incident as a result of reading about it in the newspapers. Do you recall when you read about it?

Ms. BAIRD. I really have no idea.

Senator COHEN. Let me just—

Ms. BAIRD. I read one—

Senator LEAHY. Could you bring the microphone just a little bit closer?

Ms. BAIRD. I'm sorry.

Senator LEAHY. Thank you.

Senator COHEN. I have one story entitled "Mom-Posh Neighborhood at Odds" that appeared on Monday, June 8 in the local paper.

There is another story on July 20, "Housing Suit Dropped, But Legal Fees Linger." And then there is a third story that appeared August 3, after the Democratic Convention. Then, finally, there is a story that appeared today. I mentioned the Democratic Convention, because, once again, I think that Bill Clinton was very successful in appealing to those who are characterized as being ignored or dismissed by the Republican Party.

What struck me about this story is a situation in which we have a woman who wanted to buy what used to be a college dormitory, in order to put up her two children plus her foster children and adopted children. I think they were a family of 10. They were black, Hispanic, I guess most, if not all, had some disability, and an effort was made by the neighborhood association to block the purchase of that housing unit or dormitory on several bases: One, that it would create traffic hazards because individuals would have their families or relatives visit with them which would increase congestion in the area. Second, it was argued that the children would not be properly supervised and would end up on other people's properties. Last, it would depreciate the property values.

I understand this. I don't think we should be hypocritical about this. Every community understands what goes on. The name of this particular organization is called "No Place Like Home, Inc." As Congressmen or municipal officials, we have all heard that there is no place like home except in my backyard. So an effort was made to prevent the organization from purchasing a home in the neigh-

borhood. I believe this is discrimination and a clear denial of the fair housing laws.

What I find ironic is that the Bush administration, which has so often been characterized as being insensitive to the needs of the disabled, the poor, blacks and Hispanics, rushed in within a matter of weeks and filed a lawsuit against the housing association for violating the Fair Housing Act, and sought penalties against the association.

Now, what is interesting to me—and I don't want to hold you accountable for the actions of your husband for I believe in separate careers and responsibilities—but according to today's paper, there is an item that states that your husband attended a meeting in August and argued against paying attorney fees the Federal Government is seeking as reimbursement for the woman who wanted to purchase the home. The association was refusing to pay her attorney fees of approximately \$30,000, and according to this article, your husband argued that they shouldn't be paid, because it would be a violation of the association's first amendment rights.

He may be right. He may be absolutely right as a constitutional issue. I don't know, but it seems to me to be inconsistent when those who have a higher responsibility, who occupy a higher position in our society, who have more, take a very aggressive position against those who have less and say not in our backyard.

The irony of your husband being actively involved in at least one meeting and encouraging the association not to pay the fees struck me.

Ms. BAIRD. Senator, if I could comment, I want you to know, if you don't already, that my husband is a leading scholar in the civil rights area, a leading advocate of civil rights. In fact, he was very actively involved in achieving the compromise on the recent Civil Rights Act.

Senator COHEN. I was actively involved.

Ms. BAIRD. I think if you talk to several of your colleagues, they will tell you that he was a very critical and constructive force in achieving the enactment of that legislation when it was floundering.

I learned in the last couple of days that he had attended one of the neighborhood association meetings, asked to attend by the neighborhood association to help them understand the civil rights laws, and he answered a few questions. I don't know the substance of what was said, but he was not a participant in any effort to exclude anyone.

Let me also tell you that this neighborhood is not an isolated neighborhood 20 minutes outside of an urban area. This neighborhood is in the heart of one of the most troubled cities in this country. This neighborhood is in the heart of a city that has the highest infant mortality rate in the country.

I don't know to this day the facts behind this lawsuit, and whether it was an attempt to exclude or whether it was an attempt to do something else. But I will tell you that there are other homes in this neighborhood, there is a home for disabled children. In fact, the disabled children deliver our newspapers in this neighborhood the very newspaper in which I read this story.

So I think that it is not necessarily an appropriate characterization of what transpired. I don't know the facts and I am not saying that you are necessarily wrong. I am just telling you that my husband is an advocate of civil rights.

Senator COHEN. Fair enough. I don't know the facts and I am just reading from the newspapers, and hopefully tomorrow he can clarify that. I think if you ask your husband, he might tell you that I also actively participated in drafting the compromise civil rights legislation that finally passed in 1991. I, too, am as committed as he is to the adoption of civil rights legislation.

I want to make it clear why I was asking you that question this morning—

Ms. BAIRD. I appreciate that.

Senator COHEN [continuing]. Because I had heard about his participation. I think you have clarified it, and tomorrow we will have a better opportunity to explore this.

I would like to ask you quickly about covert actions. This is something that is near and dear to my heart. Iran-Contra still lingers with us. We heard some questions raised about the special prosecutor. As you may or may not know, under the law as written in 1980, the President is required to notify Congress or at least the leadership on the Intelligence Committee and the leadership in the Congress of a covert action or proposed covert action prior to it being carried out. In extraordinary circumstances, if he can't give that prior notice, he is required to give timely notification.

The Justice Department has issued an interpretive opinion that timely notification means whatever the President decides, giving him unfettered discretion. Therefore, the President may notify Congress in a day, a week, a month, maybe a year. The President's discretion is unlimited. I was wondering, if you are confirmed, whether you would look seriously at the issue as to what is timely notification.

I think we have a major role to play in the formulation of foreign policy, and that applies to covert action, as well as overt action and—

Ms. BAIRD. Senator, I think it is a very good point and I would also add to that, that I think we may want to look at the War Powers Act and see if there is a process that we ought to use in either of these areas where those identified to be consulted are trusted to preserve the secrecy and we get more consultation.

Senator COHEN. I have one final question regarding the Independent Counsel law. You have already been asked about this issue because it is going to be reintroduced. In fact Senator Levin and I reintroduced the measure again today. I am delighted that you are probably the first spokesperson from the Justice Department who will endorse the Independent Counsel Act.

There are some members, particularly on my side, who believe that the act should cover Congress. Let me suggest to you that Congress is covered. Under the act as specifically written, the Attorney General has discretion when he or she feels there might be a conflict to call for an independent prosecutor or counsel to prosecute allegations of criminal wrongdoing against members of Congress.

Let me also add I have never known the Justice Department to be hesitant in prosecuting Members of Congress. But even notwithstanding that, Senator Levin and I are proposing to amend the act to explicitly authorize the Attorney General whenever he or she deems it wise to call upon an independent counsel.

Some Members think that is not enough, that each and every allegation against any Member of Congress should require the appointment of a special prosecutor. Now, you indicated before that you might have a problem in supporting an act which you know to be unconstitutional. Let me suggest to you that a law which mandates that the Justice Department can never investigate an allegation of wrongdoing against a Member of Congress violates the separation of powers clause of the Constitution which renders it, in my judgment, unconstitutional. I hope you will look at this, if you are confirmed, and take a strong position on it.

Ms. BAIRD. Senator, I will, indeed, look at it. You probably don't remember me as a young lawyer participating with—

Senator COHEN. I do. You testified back in, I think it was, 1982 or 1983.

Ms. BAIRD. 1981 or 1982, yes.

Senator COHEN. With Lloyd Cutler.

Ms. BAIRD. Right. And I remembered then conversations about the constitutionality of the statute and remembered then that the conclusions were that because of the unique conflict in the executive branch situation, that the constitutionality had to be upheld. And obviously the situation with Members of Congress is different, and I would have to look at that fresh at that point. Lloyd Cutler and I were sitting as private citizens looking at the issue, and, of course, I would have to look at the Justice Department point of view. But I appreciate your concerns.

Senator COHEN. You don't have to take time now to answer all those questions I posed to you.

Ms. BAIRD. Well, may I just make one comment, though? Well, really two. First of all, the comment about transporting undocumented workers, people will make claims in any context. But I must say that I don't think that serious claims that should trouble any of us will be made in enforcement actions because of this circumstance. That is a very different situation.

Second, with respect to my having a narrow corporate background and, therefore, not obviously having an ability to serve the poor, I would say that my background is probably broader than most people who have served as Attorney General before me. Most have been private lawyers in private practice who have never had to worry about what it was going to take to make sure that a work force was successful, who haven't worried about the range of businesses and the depth in which I have worried about that range of interest.

I have been in private practice. I know how much more limited one's experience is in private practice than in a senior management and corporate counsel relationship. And, of course, I have always had a real commitment to devoting my energies to working with the poor. When we moved to New Haven, the first activity I became involved with—I believe it was even before I started my job—was to help redevelop this urban blighted area and create jobs and

job training for people who are third- and fourth-generation unemployed. I think I understand what the world does, and its commercial activity and how its business activity affects the poor, to the extent that anyone can who hasn't been there. And I obviously have a lot to learn, but I think I have a great deal of compassion and sensitivity and can learn that.

The final thing I would say about the calls is, without trying to suggest that they aren't significant, because they obviously are, I can also tell you of walking down the street in Washington, DC, and having crowds of people cheer me and tell me to hang in there and tell me that they were with me. You know, all I can tell you is that I don't think you should make your decision based on those people on the street, and I don't think you should make it based on the calls. But I understand that there is some real sentiment, of course, being expressed in those calls.

Senator COHEN. Thank you very much.

The CHAIRMAN. Senator Simon.

Senator SIMON. I thank you, Mr. Chairman.

First of all, we admire not only your ability, but your endurance, Ms. Baird.

The CHAIRMAN. I will offer again, if I may interrupt, we will continue to go.

Ms. BAIRD. I am fine. Thank you.

Senator SIMON. First I want to underscore what one of my colleagues just referred to a few hours ago. You are the first nominee for Attorney General to come in here and say, "I want to have a waiting period on handguns. I want to outlaw these semiautomatics." And I think that is to your great credit that you have taken that stand.

Second, in response to Senator Leahy, you said one of the most important responsibilities you will have is in terms of handling the Supreme Court nominations and making recommendations to the President.

You said in response to that that this should be thought through in advance. I could not agree with you more. I have, if I may immodestly cite myself here, suggested, first of all, the President should take seriously the advice part of the Constitution and consult with the Senate and, I would add, I think with people in both parties. Second, the President should not rush into a decision.

As you look back at Theodore Roosevelt, Abraham Lincoln, Presidents who have really done a superb job of handling this process, they have not rushed into this.

Third, the President should have some criteria in mind as the selection is made, and I have listed some of what I think are sensible criteria.

I would ask this of you: that within 60 days, you prepare a memo for the President that is available the moment you hear a vacancy occurs, and in that memorandum you outline steps that you think should be taken. I am not asking that you show that to this committee or anyone else outside the President of the United States, but I think you should not suddenly be thrust into a decision very, very quickly.

If you would agree to do that, I think that would be an important contribution.

Ms. BAIRD. I think it is a very important suggestion, and I would just add that I would hope to have that memo to the President and have discussions with him about it even before the vacancy is created, because it is, to my mind—and I think probably very consistent with your own thinking, as you have expressed it in writing—that there is an evolution of thinking about what one wants in a Supreme Court Justice that takes time if it is going to be done right; that the President should begin contemplating what he would hope to do in that nomination in advance of having to fill a vacant seat and worry about the cases that are going to be short a Justice. And so I would hope that we would prepare that memorandum with some history, with some attempt to analyze what has made great justices, and what has led to failures of justice, and then have a dialog with the President well in advance of the vacancy so that the thinking about what we would be trying to do with the nominee would evolve.

During the course of all of that, I would expect to be having conversations with members of this body who have thought a great deal about Supreme Court Justices, particularly the people on this committee. So I think that you are absolutely right that this does need to be thought in advance, and I think the idea of beginning with a piece of paper that is analytical is a very, very good one.

Senator SIMON. I thank you, and I appreciate that.

Let me just add, you mentioned dialog with Members of the Senate. When Gerald Ford faced the opportunity of naming a Supreme Court Justice in Ed Levi, whom you mentioned in your opening testimony was the Attorney General, they consulted not only with Members of the Senate of both political parties, but asked people around the Nation who would be the best possible nominee. And it is interesting. Unlike the most recent nomination where one name was submitted to the American Bar Association, Gerald Ford submitted 20 names to the American Bar Association and said we would like your evaluation.

I mention that simply because I think the dialog ought to be not just here on Capitol Hill.

Ms. BAIRD. Right.

Senator SIMON. Not just in Washington, DC. But I think there really ought to be a careful search in the Nation.

Ms. BAIRD. I agree with that.

Senator SIMON. Senator Feinstein and Senator Simpson asked you about enforcement and additional personnel for the Immigration Service, and I agree with what they have—their questions and the thrust of their questions and your response. Let me add there is another aspect of the enforcement that has not been touched on, and that is the General Accounting Office indicated that the enforcement of the immigration law has resulted in some discrimination, particularly against Hispanic Americans and Asian Americans.

My hope would be that as you look to tougher enforcement that it would not only be on people coming in illegally, but it would also be against those who discriminate illegally, playing it safe, not hiring anybody who has an accent, Hispanic, Asian, whatever it might be.

Ms. BAIRD. I agree with you that it is a responsibility to look there, too, that our laws don't create an environment like that, and that we have the process for channeling complaints and evaluating complaints of that sort of activity. You are absolutely right.

Senator SIMON. You mentioned that you want to depoliticize the Department, and I applaud that. If I may be very specific, if Bill Clinton asks you to appear at a fundraiser, if Howell Heflin or Joe Biden or Dianne Feinstein or Carol Moseley-Braun or, even to use extreme examples, if Chuck Grassley or Larry Pressler ask you to appear at a fundraiser, what is your response going to be?

Ms. BAIRD. I would not do it. I don't think the Attorney General should appear at a—

Senator GRASSLEY. Just for us or for everybody? [Laughter.]

Ms. BAIRD. Not even for the President. I don't think it is appropriate for the Attorney General to be campaigning, to appear at a political fundraiser.

Senator SIMON. I applaud that answer.

Senator Thurmond asked you about the so-called snatch law, the decision by the then-Deputy Attorney General that said the FBI can legally go into another country and kidnap someone and bring that person to the United States for trial. That was done. The man, incidentally, was acquitted on all counts. But the Supreme Court in a 5-to-4 decision said that is constitutional.

In response to Senator Thurmond, you said you would have to examine this. I note that you are on the International Rule of Law Council of the Lawyers Committee for Human Rights. Let me ask a more general question. Do you believe that when we enter into treaties and agreements with other countries that these are binding on our country?

Ms. BAIRD. Yes; if we have formally entered into them, yes, certainly.

Senator SIMON. And so if there is an agreement with other countries that would preclude—and this is an “if” question. If there is an agreement that precludes that, then that would be an illegal act, according to your earlier response. Am I correct?

Ms. BAIRD. Senator, obviously any agreement is subject to interpretation, but presuming that it does preclude that, the answer would be yes. I mean, if the question is do I consider our international agreements binding on the Government, certainly.

Senator SIMON. Senator DeConcini, I think it was, asked about building prisons. It is very interesting. The United States has more people in prison today than any other country in the world in absolute numbers. We have a higher percentage of our people in prisons. Our Federal prison population grew from 41,500 to 70,630 between 1986 and 1992, a 70-percent increase. Between 1986 and 1992, the budget for Federal corrections rose from \$600 million to \$2.3 billion.

I would be interested if you would be willing to ask, and working with some of my friends from the police organizations who are going to be testifying—who have been almost as patient as you have been, let me add.

Ms. BAIRD. They have been great.

Senator SIMON. But to work with police organizations and others in the law enforcement field to see if there are constructive alter-

natives that we can have that may protect our society a little more fully. I am not suggesting that we shouldn't be locking people who are dangerous to our society, locking them up. I am not suggesting we shouldn't be very tough on law enforcement. But as we look at other countries and other options, it may be that we can find ways to reduce crime more and at the same time to save money.

Any reaction?

Ms. BAIRD. I think a search for those ways is very important. We have talked a little bit about boot camps before, particularly for juvenile offenders, and there may be some other things that we can do as alternatives. But it is very important, obviously, as I know you appreciate, that we have strong punishment as well as strong prevention. And I think that to the extent that we can find ways to deal with—or alternatives to prisons that still achieve many of the ends we are trying to achieve with prisons, looking for creative ways is a very good idea.

I am particularly concerned with juvenile offenders that we try to find something to do with them that isn't just locking them away. They need to know they are going to leave the street, their life is going to change. If they commit a crime, they are not just going to be put out on probation with a probation officer who can't give them what they need to change their life pattern.

But once we take them off the street, we have got to do something that is constructive and teaches them the discipline and gives them a direction to a new life. And so there in particular it seems to me that we need to look for alternatives to just traditional prisons.

Senator SIMON. I thank you. I know it will come as a great disappointment to my colleagues. I will not use my full 15 minutes here.

Thank you very, very much, Ms. Baird. Thank you, Mr. Chairman.

Senator HEFLIN [presiding]. I appear to now be the chairman, and we will call—

Ms. BAIRD. Senator Heflin, if we may, could we take a 5-minute break?

Senator HEFLIN. Yes, certainly.

Ms. BAIRD. Thank you.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Welcome back, Ms. Baird. Let me tell you, notwithstanding your phenomenal physical constitution, there are certain rules and laws that require individuals, I believe, to keep other people from doing damage to themselves. We are not going to go much longer. We will have maybe three—don't worry, Senator. We will get to you. But we are going to go maximum three more people, and then we are going to adjourn until tomorrow.

You have been incredibly cooperative and willing, but if my colleagues have more questions—and some may beyond that, we will just have to do that tomorrow. They may not have any more questions.

Tonight when we adjourn, at a maximum within the next 45 minutes, maybe as little as 15 minutes if I can convince my colleagues to refrain notwithstanding your willingness to answer

questions, we will recess with you in your case to the call of the Chair. Then if my colleagues on reflection tonight believe they have more questions for you, we will resume in the morning.

Having said that, let me now yield to Senator Pressler.

Senator PRESSLER. Thank you very much. I have several substantive questions regarding the Justice Department I want to go through fairly quickly. But first, I did want to say in my last round of questions I announced I would vote against your confirmation. I just had one more question on the issue of hiring illegal aliens. Then I will go on to other questions regarding the management of the Justice Department.

Did you tell President-elect Clinton directly about your hiring illegal aliens during your interviews with him?

Ms. BAIRD. I told the senior transition official about it.

Senator PRESSLER. But you didn't tell President Clinton during the interview with him you had in Little Rock?

Ms. BAIRD. No.

Senator PRESSLER. Thank you.

Ms. BAIRD. My judgment, Senator, is that it was more appropriate to talk to a senior official when I was asked if I was willing to be considered for the position. I had an interview with President Clinton that was a general interview. As you have probably understood, he has interviewed a number of people with general interviews, and I was then asked by a senior transition official if I was willing to be considered for this position. And it was in response to that that I told him about this matter.

Senator PRESSLER. Well, as I said earlier, in listening to your position on issues within the Department, I identify with many of your positions on the issues. But it is my conclusion that you would not be effective as Attorney General because of your having illegally hired aliens. That has led me to oppose your nomination.

But, in any event, should you be confirmed, let me ask you some questions about the operation of the Justice Department. First of all, in terms of monopolies in airlines, we have a real problem developing, for smaller cities, at least, in airline service. It appears that with deregulation of the airlines, we could end up with very, very few airlines serving smaller cities and rural areas.

What will you do as Attorney General to address airline monopolies and antitrust problems?

Ms. BAIRD. That is an issue that I think this Justice Department would have to look at anew. I am not really in a position today to tell you what our policy would be toward that, but I appreciate the concerns there.

Senator PRESSLER. This next question you may want to answer for the record. Agricultural cooperatives are sometimes given an exemption from the antitrust laws under the Capper-Volstead Act. Would you support continuing that exemption?

Ms. BAIRD. I would need to look into it, Senator.

Senator PRESSLER. OK. Thank you. If you could give an answer in writing, I would much appreciate that.

Ms. BAIRD. I might say that it is probably an issue that I would need to discuss and develop a position on after becoming Attorney General rather than in advance of that, because it is not one that I am familiar with.

Senator PRESSLER. OK. Now, you have said that you wish to depoliticize the Justice Department, and it has been the practice for a number of years for Federal judges to be picked essentially by Senators of the President's party. And I suppose that some people think that Senators like to do that, but actually this Senator has found that every time there is a Federal judicial vacancy, there are about 30 lawyers and judges in the State who want it. You pick one and the other 29 are mad at you.

So I wouldn't say that Senators are so protective of that prerogative as some people might assume. In fact, we used to pick bankruptcy judges when we had a President of our party. When Bill Clinton got elected, I said, well, one good thing about it is nobody will be writing to me wanting to be a Federal judge for a while at least, and nobody will be mad at me if I don't send their name down.

But we have this tradition in the United States of our Federal judges being selected essentially by Senators of the President's party. This is a very political way to pick judges, you could say. On the other hand, it has worked out fairly well because as the political pendulum has swung back and forth, we have had liberals and conservatives. And Arthur Schlesinger says that every 15 years the political pendulum swings one way or another.

But this might be an issue in the long run we should examine, from the point of view of the quality of justice. We presently pick our judges based on politics, basically.

Now, if we are going to depoliticize the Justice Department, would judicial selection be something you would have as a goal to change?

Ms. BAIRD. Well, as you point out, there is a longstanding Senate tradition of recommending individuals to the President who might be considered to be Federal district court judges, at the district court U.S. marshals, bankruptcy judges, not the circuit court. That tradition presumably doesn't preclude and shouldn't preclude Senators of one party from recommending Senators of another party, and I would expect that Bill Clinton will nominate some Republican judges during his tenure.

The CHAIRMAN. It will be an exception. There weren't any Democratic judges nominated during the tenure of the last 12 years. And I find it fascinating that my Republican colleagues all of a sudden are really interested in how Senators get to choose.

Senator PRESSLER. You will have to explore this issue on your time, my good friend. There were a few Democratic judges appointed. I have been interested in this subject for a long time.

But, in any event, let me ask a question about search and seizure, a subject we debate up here on the crime bill. As I understand it, if a policeman is looking for something, he gets a search warrant, searches a car, and finds some marijuana which was not the reason for obtaining the warrant, the marijuana is excluded from the criminal evidence used at trial. I am sure you are well familiar with the exclusionary rule. There was a basic difference in the two crime bills during the last Congress. President Bush had a crime bill, and the Democrats had a crime bill. This year, Senators Dole and Thurmond have a crime bill, and the Democrats

have a crime bill. The exclusionary rule is a basic area of contention.

If a policeman in good faith is searching for something and finds something else that is illegal to possess, why shouldn't it be admitted in court?

Ms. BAIRD. The exclusionary rule as it works now seems to have come pretty close to a good situation here where if something is found in the course of an otherwise legitimate search, that it can be admitted as evidence. I think it is an issue we are always making sure we reach the right balance between fairness and legitimate law enforcement activity. And we are probably at about the right balance now, I would say.

As I understand it, the exclusionary rule as it functions doesn't—rarely stands in the way of use of evidence. It is not a large problem. And so I think we are probably at about the right balance.

Senator PRESSLER. OK. When the U.S. Government, the Justice Department, fines these huge corporations or labor unions, that fine is frequently passed on to consumers to pay instead of the top corporate officers. I know that US West received a huge fine a few years ago, and other companies have also. But it appears to the public, at least, that rate-payers or consumers end up paying these fines. The fines don't reduce the huge salaries of the corporate officers.

Do we need to redesign the assessment of those fines so that they will actually somehow penalize the people who made the corporate decisions violating the law? Right now, a lot of cynics say, well, if you fine a corporation \$10 million, they merely pass it on to the rate-payers or the shareholders get a little less dividends or product prices are raised. But the people who actually made the decision, the top corporate officers, who may be making \$500,000 or \$1 million a year, frequently are not touched by the decision.

Do we need to change that?

Ms. BAIRD. It is a worthwhile area to look at. I am not familiar with the particular kind of violation that you are talking about, but it seems to me a very worthwhile area to look at. In some circumstances, it may be that individuals should be responsible; in other circumstances, it may be that certain kinds of penalties shouldn't be able to be passed on.

I know in the government contracting area there are certain kinds of fines that can be included and certain ones that can't. And I think it is a worthwhile exploration.

Senator PRESSLER. Many small business owners and farmers feel that if they run afoul of the Justice Department they will be ruined. People are terrorized of the Federal Government. If they have a wetlands violation or some problem in their business, and the Justice Department brings an action against them, by the time they hire attorneys who are capable of matching the Justice Department's ability just to sit there and prosecute, that they haven't got a chance. Many citizens are terrorized by the Federal Government.

Would you say that is a fair assessment?

Ms. BAIRD. I think that there are some that are—clearly there are a lot of citizens who are anxious about this. I can't tell you that

I would say that there are a lot of citizens terrorized. I really am not familiar with that.

Senator PRESSLER. Well, if a farmer runs afoul of the Federal Government, gets into a dispute over a very small wetlands violation, he loses his entire crop payment. The only way he can fight is to hire a law firm, and that is just impossible for most farmers, and small businessowners.

All across America, I think we have to be aware of the immense power of the Federal Government and the inability of people to defend themselves, to be able to afford the kind of law firms and legal representation that it takes to offset charges from the Federal Government. Sometimes those charges are accurate, but it especially puts a lot of small businessowners in a very difficult position. That also is true of tort actions brought against a small businessowner. One major lawsuit can wipe them out, and they really have no choice but to settle or sell out.

Ms. BAIRD. I appreciate that, and I think that that power has to be used very carefully because it has that potential.

Senator PRESSLER. Mr. Chairman, that concludes my line of questioning. Thank you very much.

The CHAIRMAN. Thank you very much, Senator.

I understand our colleagues from Illinois and California first have some questions, but it is my impression they are not going to take 15 minutes each. So what we will do is we will have the two Senators question, and then we will end for this evening.

Senator FEINSTEIN. Mr. Chairman, I don't know whether this is appropriate, and I am sure you will counsel me as to its appropriateness, but I would like to ask you a couple of questions on the protocol——

The CHAIRMAN. I would rather be Secretary of State.

Senator FEINSTEIN [continuing]. But I would like to ask you a couple of questions on the protocol involving FBI reports.

The CHAIRMAN. I am happy to answer any questions you have.

Senator FEINSTEIN. There was a colloquy earlier in this hearing which, in essence, indicated that the findings of the FBI report were made public prior to the time that they reached this committee.

The CHAIRMAN. That's correct, or at least as portion was made public by someone.

Senator FEINSTEIN. Now, what is the protocol that the FBI follows with respect to those reports?

The CHAIRMAN. The protocol as it relates to the committee, which is the only thing that I can speak to, is that the FBI report is made available to me and to the ranking member—and to how many designated staff—and the investigative staff of the majority and minority, which totals 9 individuals. That report is made available to that group of individuals.

Then each and every member of the Senate committee has the right, as well has the obligation, to avail themselves of that report once it is here. The way in which that is done, under the direction of this Chair, and it has been this way with other chairs, as well, is that one of the staff persons, usually the chief of staff of the committee, the chief counsel, but sometimes chief investigative person, will walk into the Senator's office with one single copy of the re-

port, sit with the Senator while he or she reads that report and be prepared to answer any questions, and then take the report and put it back under lock and key. That is the agreement negotiated with the last two administrations, and that was the practice in the previous administration.

Now, I have just had a note passed to me—what is the protocol before we get the report?

Senator FEINSTEIN. Correct.

The CHAIRMAN. I cannot speak to that, because before we get the report, that is totally an administration operation. We are not told of the content of that report, unless as in the case of the nominee, prior to us being told anything by the FBI, the nominee told me and others of what she told the FBI, or at least the same circumstances.

In this case, I am not at liberty to even—we have this strange anomaly. We are not under the penalty of breaking the law. We are not allowed to ever discuss the content of an FBI report, even if the nominee authorizes us to do that. And the reason for that is that witnesses are questioned by the FBI and background checks, and they are granted and guaranteed anonymity, and so even if the witness, even if the nominee says it is all right with me to release my FBI report, it is not all right with the witnesses who spoke to the FBI on condition that they would be guaranteed anonymity. There is a Federal law that, in fact, protects that.

There is also a Senate rule. There are two different issues. One is a piece of legislation, there is a Federal law, and the other is a Senate practice. So what happens in the case if a nominee wishes to tell us what they told the FBI, that is perfectly within their right. But the protocol within the administration between the White House and the FBI or the FBI and the Justice Department is something I cannot speak to with firsthand knowledge.

Senator FEINSTEIN. Just for my own knowledge, the reports of this kind go to the White House prior to coming here?

The CHAIRMAN. Yes, generally speaking, the way it functions is that the compilation of the report by the FBI—and I might point out, the FBI never reaches conclusions in their reports. They do not say Charlie killed Cock Robin. They say Charlie said that Mary did the following, and Mary said that Charlie did this and Harry said Bill did that. It is all hearsay, and they follow up leads based only if they believe a law may have been violated or if this committee says to them, you now, you gave us a report and we would like to know more, why didn't you interview John Doe, and they will say what do you want us to ask John Doe. We want to say we want to know whether John Doe was at Ninth and Vine on the 17th. They will go back and interview John Doe.

Now, in the case of a transition administration, what happens is, notwithstanding the President-elect at the time has not been sworn in, when he or she, the President-elect, sends their nominees to the FBI, that has to be done before they are sworn in, in order to get ahead of the curve. In that case, the FBI submits these reports to the transition team, designated persons on the transition team.

So I believe that it would be appropriate—I don't know whether it occurred—they could also submit it, in the case of a transition, to the sitting President's Attorney General, the sitting President's

White House counsel, and I don't know whether it was done here. And they would also submit it to the transition team.

So I cannot tell you with certainty, Senator, who within the administration was given a copy of the FBI report. The only thing I can assure you is that there was no FBI report before this committee, and that was one of the dilemmas, in fairness again to the nominee. I believe it is fair to say she assumed, she was being told the same thing we were being told, where is the FBI report any day now, any moment now, and that day stretched into a week.

So that is why if my facts are correct and if my recollection is correct, and I believe it is, that is why I can understand the nominee being in the dilemma, is the protocol to wait until they get the FBI report before I talk to them or should I talk to them before the FBI report, and so on.

Senator FEINSTEIN. But the President would not necessarily have seen the FBI report?

The CHAIRMAN. In all probability, the President would not see the FBI report, because the FBI in the transition circumstance is preparing hundreds of reports. The FBI is preparing a report on every major Cabinet nominee, the FBI is preparing background reports on prospective nominees. Presidents and Presidents-elect want to know before they name John Doe or Mary Smith what their general background is. So you will have an FBI report on occasion being done on two or three prospective persons for one—usually, they try to narrow it down first and decide who they want, but it would not be unusual for there to be preliminary work done on more than one.

I was just asking my chief counsel how many FBI reports were being prepared between November and the day the President was sworn in, and she accurately points out she doesn't know, but a lot, a whole lot.

Senator FEINSTEIN. My sense is they don't end up in the newspaper.

The CHAIRMAN. Well, that is correct. They generally do not end up in the newspaper. But there is another general rule that I operate on, unfortunately, after 20 years in this town, that whether they come from administrations, White Houses, Congresses, agencies, bad news usually leaks out, and I am not being facetious when I say that, Senator. I wish I could assure you, as a new member, that there is never any confidential information that leaks out of a White House or an administration.

I think the studies that have been done have indicated, both in Democratic and Republican administrations, that that is not unusual for that to happen. It is a bit unusual in my experience for the contents of an FBI report, while the report is being compiled, before, to the best of my knowledge, anybody had a completed report. I don't know that for a fact. I know we hadn't had it, and my belief is I don't know that anybody in the administration had a completed report. Somewhere between the final draft being done and handed to a transition team person, which in turn they read it and then handed it to us, somewhere in that space this information went to the press. I wish I could tell you more.

Senator FEINSTEIN. Thank you, Mr. Chairman.

I think I have asked the nominee all the questions I have. Thank you.

Ms. BAIRD. Thank you.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

Ms. Baird, you must be exhausted. It has been a long day. I just have a couple of questions, one going to the operation of the Department and the other going to the conversation that we have had all day long regarding the controversy surrounding this nomination.

Before I ask the latter question, I was reminded sitting here that in another nomination that happened some time ago, there was a lot of conversation about a line of questioning that wasn't pursued. When the nominee said he had never had a conversation about *Roe v. Wade*, everybody I knew said how is that possible?

Yesterday, you said that you have not had a discussion regarding the terms of employment with the couple, and specifically with the lady who took care of your child. I know that we are awaiting the testimony from your husband, who I am confident, I hope, can shed some additional light on this issue, on this subject.

But insofar as there have been discussions all day long about your state of mind during the period from July 1990, when the couple started with you, through December 1992 when the nanny left your employment, the question comes to mind and I just can't help think that it is hard—my question is how was it that you did not have a discussion with this lady about her immigration status and terms of her employment, what it was that she saw, what her life issues were? Was she English speaking? Did you have conversations?

Again, I don't want to just take this thread too far, and I really frankly hesitated, really. As you know, I really have not asked questions in this line, precisely because it gets repetitive after a while, and we have been asking these questions on state of mind all day.

Ms. BAIRD. Senator, I don't—

Senator MOSELEY-BRAUN. But I think it really is important to me to know, recognizing the kinds of concerns that women have with child care, how it was that you had never had a conversation in that period of time regarding this lady's immigration status and what was happening in her life.

Ms. BAIRD. I am not sure of the particular question or answer to which you refer. I think it was probably a narrow question which I may not have communicated very clearly. I certainly had conversations with her regularly about the important deeper human issues in life, how she should think about training herself for her future and jobs after she left us. I spent a tremendous amount of time with her in the healing process after her husband left her. We had many conversations about life in general and her life in general.

I am not sure exactly what the question was that I was answering, whether I had not had a conversation with her about something in particular. My husband was talking with her and handling the whole immigration application process, the sponsorship process, and he would have talked with her about that.

But I had a relationship with her where we talked about other issues. I am not sure if I am answering your question.

Senator MOSELEY-BRAUN. Kind of. Again, I want to be clear about this, because if the issue is state of mind, your state of mind at the time that this crime of omission occurred——

Ms. BAIRD. If I could just correct you, it wasn't a crime.

Senator MOSELEY-BRAUN. Strike crime, this nonactivity occurred. I think it is important to establish for the record whether you specifically had a conversation with this person, this lady or the couple, she or her husband, whether you yourself specifically had ever had a conversation with either of them regarding immigration status, or did you rely entirely on your husband to take care of this issue, to take care of this matter and never raised it in conversation with them directly.

Ms. BAIRD. I expect that when my husband and I first interviewed them, that we told them that we had to consult a lawyer to find out if we were able to hire them. I say I expect that, because I know my husband told the employment agency that, and so I imagine we would have told them that, also, in the interview.

But in terms of the actual implementation of the process, the kinds of conversations that one would have about what needed to be done to fulfill the process and the actual doing of that with them, my husband was the one who did that. And the only way I can explain this to you is something you probably very well understand, that if we didn't divide responsibility for things, we would never be able to live our lives with the busy lives that we both have, both working as hard as we do.

So this was not in a category different from many other things where we divided responsibility. We barely—I know some people who lead lives like ours say that they never get a chance to talk about large issues, because all they talk about are things having to do with what the child did that day or what they are going to have for dinner the next night.

We have consciously made a different choice in our lives. We like to be able to talk about public issues and larger issues and things that we are working on, so we have tried to eliminate a lot of the conversation about who is responsible for getting the diapers, to harken back to Senator Biden's earlier comments, and to try to understand between us who is responsible for what in the day-to-day of life and go about doing that, so that we don't have to spend a lot of time wondering who is going to do everything from making sure the garbage is taken out to the driveway, you know, cleared and the groceries bought.

So this really fell in the category of dividing up responsibility in our home for who would handle something, and then we tended not to discuss things like that after we made the division of responsibility, so we have some time to talk about other things in our lives.

Senator MOSELEY-BRAUN. And neither the nanny nor her husband ever raised the issue with you, they took the issue with your husband?

Ms. BAIRD. I think they viewed it as an issue that they were to discuss with him, that I really wasn't informed enough to be involved in it.

Senator MOSELEY-BRAUN. So they didn't raise it with you?

Ms. BAIRD. No.

Senator MOSELEY-BRAUN. You didn't raise it with them and they didn't raise it with you?

Ms. BAIRD. Right.

Senator MOSELEY-BRAUN. I just wanted to establish that. I think that is important, again, to make the distinction, because, quite frankly, this is new territory, as you can imagine. I have not been around here all that long. Dianne Feinstein, actually you are senior to me, aren't you?

I am the least senior member on this committee, but I can't imagine that there have been too many hearings that have turned on the issue of housekeeper and babysitter arrangements. This is different, of course, because you are standing to be the chief law enforcement officer in the country, and there are an awful lot of people out there, I don't have to tell you, who are very concerned about the appearance of impropriety, about the abdication of responsibility.

So I think it is really important for all of us who care about this nomination to have the record very clear that this wasn't so much of an abdication of responsibility as an allocation of responsibility, that this was not something that you just didn't pay attention to, but, rather, that there was a decision—a specific decision—to allocate the responsibility and you did not play a role yourself in following through or dealing with this situation. I think that is important.

There are so many different issues that came up over the day. This is the first question and this is the more technical question, going to the Department. I care a lot about this Department. It is obviously very important.

One of the problems the Department of Justice has experienced over the last several years has been the coordination between Justice here in Washington and the U.S. attorneys offices throughout the country, particularly in light of the track record in terms of coordination on the BCCI scandal and the BNL scandal. In both of those instances and others—and those are probably the most egregious and most popularized—in both those instances, clearly there was a failure to communicate between Washington—or hopefully there was a failure to communicate between Washington and the U.S. attorneys offices.

I guess my question to you, which is a broad general question and I guess will be my last, is how do you see coordination, particularly in the area of the big cases having to do with financial crimes and RICO and fraud, those issues, how do you see the coordination between Justice and the U.S. attorneys office taking place?

Ms. BAIRD. I think we need to strengthen that coordination. You have identified something that is very important that should happen through both formal and informal means, I think. You have been in the U.S. attorneys office and you know probably from that experience that if there aren't the informal links, the bringing of U.S. attorneys into main Justice to help Justice make decisions on policy issues, U.S. attorneys spending some time helping to do some of the work of the Justice Department, in addition to the work of their own office, that the communications can break down

and U.S. attorneys offices can consider themselves separate from main Justice.

The more formal means are obviously reporting channels and resources available at main Justice, so that when certain kinds of complex financial cases develop, for example, that there are resources at main Justice that can be tasked out to work on them, or some cases appropriately brought into main Justice.

It is a delicate line not to eliminate the independence of the U.S. attorneys, which they appropriately should have, but also to provide the coordination and the central direction in some cases. But some of the cases you point out are ones where some of the failures were not having really the knowledge base and coordination in main Justice, and so it is something that I would want to give a good deal of attention to, the whole relationship between main Justice and the U.S. attorneys.

Going back also to the question that I was asked before about the publicity and the implications of that is something that I would like to look at very hard. I think it is a very, very important question, because, truthfully, the principal criminal prosecutors for the Justice Department don't sit in Washington, they sit in those U.S. attorneys offices, and so your point is very well taken. It is a critical aspect of what needs to be done.

Senator MOSELEY-BRAUN. Thank you.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Thank you very much.

Thank you, Ms. Baird, for your courtesy and your patience today.

We were not able to announce the witness list exactly what it will be tomorrow. I will consult with our colleagues to see whether or not it is necessary for you to come back tomorrow and whether or not you need come back first or another witness, because we have kept you so late, you decided you want to stay so late. But we will be talking with your staff as to that accommodation.

Tomorrow, depending on what order we go, we will be asking your husband to testify and maybe others. I say to the police groups that are here faithfully to support your effort, you have been sitting here for days, that hopefully we will get to that tomorrow. In the meantime, while we are working out the details of the schedule, the only thing that we will do that I can say with certainty at this moment is we will reconvene tomorrow at 10 a.m., in this room.

We are recessed until then.

[Whereupon, at 9:20 p.m., the committee recessed.]

[Ms. Baird's nomination was subsequently withdrawn.]



APPENDIX

Testimony of
DEWEY R. STOKES
National President,
FRATERNAL ORDER OF POLICE
Before the
United States Senate Committee on the Judiciary
January 19, 1993

CHAIRMAN BIDEN, SENATOR HATCH, AND MEMBERS OF THE
SENATE JUDICIARY COMMITTEE -- GOOD AFTERNOON.

MY NAME IS DEWEY STOKES, AND I AM THE NATIONAL
PRESIDENT OF THE FRATERNAL ORDER OF POLICE (FOP). I AM APPEARING
TODAY BEFORE THE COMMITTEE ON BEHALF OF THE APPROXIMATELY 248,000
PROFESSIONAL LAW ENFORCEMENT OFFICERS WHICH COMPRISE THE FOP,
MAKING OUR ORGANIZATION THE LARGEST RANK-AND-FILE POLICE GROUP IN
THE UNITED STATES.

THE FOP IS TODAY PROUD AND HONORED TO STATE OUR
ENTHUSIASTIC AND UNQUALIFIED SUPPORT FOR PRESIDENT-ELECT BILL
CLINTON'S DESIGNATED NOMINEE FOR U.S. ATTORNEY GENERAL, ZOE
BAIRD.

MR. CHAIRMAN, I HAVE APPEARED BEFORE THIS DISTINGUISHED
PANEL ON A NUMBER OF OCCASIONS OVER THE PAST FIVE YEARS ON A
VARIETY OF MATTERS. INDEED, THE LEGISLATIVE AGENDA OF THE FOP IS
WIDE-RANGING AND INCLUDES SUCH MATTERS AS CRIME CONTROL, HALTING

THE PROLIFERATION OF SEMI-AUTOMATIC WEAPONS, "BRADY" WAITING PERIOD FOR HANDGUN PURCHASES, CRIMINAL PROCEDURAL REFORM, A "POLICE OFFICERS' BILL OF RIGHTS," AND DRUG INTERDICTION -- JUST TO NAME A FEW ISSUES.

JUST AS THE FOP IS CONCERNED WITH IMPORTANT ISSUES RELEVANT TO THE LAW ENFORCEMENT COMMUNITY, SO ARE WE PARTICULARLY ATTENTIVE TO SUPPORTING THOSE INDIVIDUALS IN POSITIONS OF INFLUENCE WHO CAN HAVE AN IMPACT ON THOSE ISSUES. THE FOP HAS TESTIFIED NUMEROUS TIMES BEFORE THIS COMMITTEE ON NOMINEES TO THE DEPARTMENT OF JUSTICE AND RELATED AGENCIES. THE FOP DOES NOT ENDORSE A NOMINEE IN A CASUAL MANNER -- WE DO SO ONLY AFTER BECOMING CONVINCED BEYOND A REASONABLE DOUBT THAT THEY ARE HIGHLY CAPABLE INDIVIDUALS WITH A PROVEN TRACK RECORD OF ACCOMPLISHMENTS WHICH WILL BENEFIT THE CAUSE OF LAW ENFORCEMENT GENERALLY.

THE FOP BELIEVES THAT ZOË BAIRD IS SUCH AN INDIVIDUAL AND WILL MAKE AN EXCELLENT U.S. ATTORNEY GENERAL. THE FOP PREMISES THIS BELIEF ON THREE SPECIFIC GROUNDS. THE FIRST IS MS. BAIRD'S EVIDENT MANAGEMENT AND ADMINISTRATIVE EXPERIENCE. SECOND IS HER STRONG POSITION AGAINST THE INCREASED POLITICIZATION OF THE DEPARTMENT OF JUSTICE (DOJ). THIRD, AND FINAL, IS MS. BAIRD'S COMMITMENT TO THE LAW ENFORCEMENT AGENDA OF PRESIDENT-ELECT CLINTON.

THE DEPARTMENT OF JUSTICE, IN THE LAST DECADE, HAS VIRTUALLY EXPLODED WITH NEW PROGRAMS, POLICIES, AND RESPONSIBILITIES. THE DEGREE OF THIS GROWTH CAN BE FOUND IN THE SIZE OF THE DEPARTMENT'S BUDGET WHICH GREW FROM \$2.35 BILLION IN FY82 TO OVER \$10.4 BILLION IN FY92. INDEED, LAW ENFORCEMENT HAS BECOME A VERY COMPLEX ENDEAVOR AND THE DEPARTMENT HAS HAD TO RESPOND ACCORDINGLY. IN AN EFFORT TO BETTER ENSURE THAT THE DEPARTMENT IS MEETING ITS OBLIGATIONS, THERE IS A STRONG NEED FOR MORE CENTRALIZED AND COORDINATED MANAGEMENT. THIS NECESSARILY

INVOLVES THE CLARIFICATION OF OBJECTIVES AND PRIORITIES, THE AWARENESS AND UTILIZATION OF AVAILABLE RESOURCES TO MEET THESE CHALLENGES, AND THE ABILITY TO EFFECTIVELY MONITOR ONGOING ACTIVITIES IN ORDER TO GUARANTEE THAT THESE DEPARTMENTAL GOALS AND PRIORITIES ARE IN FACT BEING MET.

THE FOP IS CONFIDENT IN ZOË BAIRD'S ABILITY TO BRING TO THE DEPARTMENT THE MANAGEMENT SKILLS SHE DEMONSTRATED AT HER PREVIOUS POSITIONS OF RESPONSIBILITY. IT IS CLEAR TO THE FOP, AFTER REVIEWING HER WORK IN THE CORPORATE COMMUNITY, THAT MS. BAIRD WAS ABLE TO COORDINATE AND EFFECTIVELY MANAGE THE LEGAL STAFF AND AFFAIRS OF MULTI-FACTED FORTUNE 500 BUSINESS ENTITIES. FURTHERMORE, IT IS THE BELIEF OF THE FOP THAT MS. BAIRD'S ABILITIES IN THIS AREA WILL ALLOW HER TO HELP THE DEPARTMENT FUNCTION IN A MORE EFFICIENT MANNER WHICH BETTER UTILIZES THE SCARCE RESOURCES AVAILABLE TO HER.

THE FOP IS ALSO GREATLY ENCOURAGED BY MS. BAIRD'S STRONG POSITION ON THE NON-POLITICIZATION OF THE DEPARTMENT. THIS COMMITTEE IS ESPECIALLY AWARE OF THE PROBLEMS THAT ARE INHERENT WHEN THE ADMINISTRATION IN POWER SEEKS TO USE THE DEPARTMENT AS A MEANS TO CARRY OUT A POLITICAL AGENDA. REGARDLESS OF WHETHER ONE AGREES WITH THE POLITICAL AGENDA IN QUESTION, THE USE OF DOJ FOR SUCH A PURPOSE DIMINISHES BOTH THE INTEGRITY OF THE DEPARTMENT AND THOSE WHO SERVE IT.

ZOË BAIRD HAS WRITTEN FORCEFULLY ON THE NEED TO REMOVE THE DEPARTMENT, TO THE DEGREE POSSIBLE, FROM THE DAY-TO-DAY POLITICAL DYNAMICS WHICH WILL INEVITABLY IMPACT ANY ADMINISTRATION. THIS IS A POSITION WHICH NEEDS TO BE FORCEFULLY ARTICULATED AT THE TOP LEVEL OF THE DEPARTMENT AND DILIGENTLY ENFORCED THROUGHOUT ALL LAYERS OF THE AGENCY. THE FOP LAUDS MS. BAIRD FOR HER VIEWS ON THIS ISSUE AND IS OPTIMISTIC OF HER ABILITY TO ADHERE TO IT DURING THE NEXT FOUR YEARS.

FINALLY, THE FOP BELIEVES THAT ZOË BAIRD WILL FAITHFULLY IMPLEMENT THE LAW ENFORCEMENT AGENDA OF PRESIDENT-ELECT CLINTON, AN AGENDA WITH WHICH WE ARE QUITE COMFORTABLE. THROUGHOUT LAST YEAR, THE FOP AND OTHER LAW ENFORCEMENT ORGANIZATION HAD THE OPPORTUNITY TO DISCUSS IN SOME DETAIL THE NEEDS OF OUR MEMBERS WITH THE PRESIDENT-ELECT. THOSE DISCUSSIONS YIELDED BROAD AREAS OF AGREEMENT ON MATTERS INVOLVING, BUT NOT LIMITED TO, MEASURES TO CONTROL CRIMINAL ACTIVITY, THE SO-CALLED "BRADY" LEGISLATION ON WAITING PERIODS FOR HANDGUN PURCHASES, REFORMS IN THE AREA OF CRIMINAL PROCEDURE, A "POLICE OFFICERS' BILL OF RIGHTS," AND INCREASED FUNDING FOR STATE AND LOCAL LAW ENFORCEMENT INITIATIVES. THE FOP HAS SPOKEN WITH MS. BAIRD ABOUT THESE AND OTHER ISSUES RELEVANT TO LAW ENFORCEMENT, AND WE ARE QUITE CONFIDENT IN HER COMMITMENT TO WORKING ON THEM IN A MANNER CONSISTENT WITH WHAT WE KNOW TO BE PRESIDENT-ELECT CLINTON'S POSITION. MOREOVER, THE FOP LOOKS FORWARD TO WORKING WITH A WHITE HOUSE AND A DOJ WHICH ARE BOTH SERIOUS IN THEIR EFFORTS TO COMBAT CRIME.

BASED ON OUR DISCUSSIONS WITH MS. BAIRD, AND BEYOND THE SIMPLE ADHERENCE TO THE PRESIDENT-ELECT'S CRIME AGENDA, THERE IS A REALIZATION ON HER PART OF THE ISSUES CURRENTLY FACING STATE AND LOCAL ENFORCEMENT AGENCIES. MS. BAIRD FULLY RECOGNIZES THAT ALMOST 95% OF ALL REPORTED CRIME TODAY IS NON-FEDERAL IN NATURE. MS. BAIRD ALSO RECOGNIZES THE NEED FOR STRENGTHENING THE LINES OF COMMUNICATION AND COOPERATION BETWEEN THE FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES. IN ADDITION, MS. BAIRD IS ALSO WELL AWARE OF THE NEED TO EXAMINE ALTERNATIVE METHODS OF POLICING AND INCARCERATION IN ORDER TO MAKE SCARCE RESOURCES GO FURTHER. FINALLY, MS. BAIRD IS ALSO WILLING TO SEE THAT THE NEEDS OF LAW ENFORCEMENT GO BEYOND THE TRADITIONAL ARREST AND INCARCERATION STAGES, AND EXTEND INTO THE AREAS OF EDUCATION, FAMILY VALUES, AND A SENSE OF COLLECTIVE COMMUNITY SPIRIT.

MR. CHAIRMAN, THE EVENTS OF THIS INAUGURAL WEEK ARE HEAVY WITH SYMBOLISM -- WE ARE TOLD THAT THIS IS A CELEBRATION OF RENEWED HOPE. THE LAW ENFORCEMENT COMMUNITY HAS MUCH WORK LEFT OVER FROM THE LAST SESSION OF CONGRESS TO BE HOPEFUL ABOUT, AND WHICH WE PLAN TO PURSUE WITH RENEWED URGENCY. THERE IS NO REASON WHY WE CAN NOT HAVE THE CRIME BILL FROM LAST SESSION, WITH SOME MINOR FINE-TUNING, RE-INTRODUCED AND PASSED ON THE FLOOR BEFORE THIS SUMMER. THAT IS A GOAL SHARED BY A MAJORITY OF THIS COMMITTEE, THE PRESIDENT-ELECT, AND THE LAW ENFORCEMENT COMMUNITY. THERE IS JUST NO EXCUSE TO STAND BY AND DO NOTHING WHILE ADDITIONAL BROTHER AND SISTER LAW ENFORCEMENT OFFICERS ARE KILLED AND MAIMED IN THE LINE OF DUTY.

THE FOP STANDS READY TO HELP MOVE AN OMNIBUS CRIME LEGISLATION EARLY ON IN THE SESSION, AND WE BELIEVE THAT ZOE BAIRD, AS THE NEXT ATTORNEY GENERAL, CAN HELP MAKE THAT HAPPEN. IN ADDITION, WE FEEL THAT MS. BAIRD BRINGS A BROAD RANGE OF PROFESSIONAL AND PERSONAL ASSETS WHICH WILL HELP MAKE THE DEPARTMENT ACCOMPLISH ITS MISSION MORE EFFECTIVELY.

MR. CHAIRMAN, THE FOP STRONGLY COMMENDS ZOE BAIRD TO YOU AND THIS DISTINGUISHED PANEL, AND WE URGE THAT HER CONFIRMATION BE HANDLED IN AS EXPEDITIOUS A MANNER AS POSSIBLE.

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY, AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS WHICH YOU MAY HAVE. THANK YOU.

Testimony of Charles "Chip" Warren
National Vice President of the
International Brotherhood of Police Officers
to the
Senate Judiciary Committee
regarding the
Confirmation of Zoe Baird
for the position of Attorney General

Senate Dirksen 226
January 1993

Good morning, Mr. Chairman, and members of the Senate Judiciary Committee. My name is Chip Warren, and I am the National Vice President of the International Brotherhood of Police Officers (IBPO), a position I have held since 1987. Prior to this, I served 10 years as an Atlanta, Georgia police officer and for three years was the President of IBPO Local 623. The IBPO is an affiliate of the Service Employees International Union, the fourth largest union in the AFL-CIO. The IBPO represents more than 40,000 federal, state, and local rank and file law enforcement officers and is the largest police union in the country. On behalf of the IBPO membership, I am pleased to appear before the committee on the matter of Zoe Baird's confirmation hearing to become Attorney General.

Last week the IBPO provided each member of the Senate Judiciary Committee with a letter urging the confirmation of Ms. Baird for the position of Attorney General. I have attached this letter to my written testimony. We appear before the committee today to reiterate our unqualified support for Ms. Baird and once again urge her confirmation. The IBPO believes that President Clinton has made a superb choice in nominating Ms. Baird for Attorney General.

In a meeting with IBPO and other law enforcement leaders last week, Ms. Baird demonstrated her firm knowledge of the issues crucial to law enforcement. Ms. Baird recognized the need of the Department of Justice to focus immediately on the issues pertaining to crime, drugs, and guns which remained unresolved at the conclusion of the 102nd Congress. We look forward to working with her and the Congress in helping to provide state and local law enforcement with the resources which are desperately required to fight crime in America.

As you well know, Mr. Chairman, the IBPO has urged Congress repeatedly for a strong crime bill. Along with many other law enforcement organizations, the IBPO endorsed the Crime Bill Conference Report during the last session of Congress as a tough, sensible measure which focused critical resources at the state and local level where most crime-fighting is waged. The IBPO continues to endorse measures which help to put more cops on the street and more criminals in jail. We worked long hours with you and your staff last year to accomplish this goal. We believe that as Attorney General, Ms. Baird will play a key role to ensure that the police in America will in fact obtain a tough crime bill that employs substance and not rhetoric to fight crime.

In addition, Mr. Chairman, the IBPO has long been an advocate of sensible firearms restrictions that limit access by criminals to weapons while protecting the rights of law abiding citizens. Like many of my colleagues, who are both law enforcement officers and sportsmen, I understand the value and danger of firearms. In fact, in 1981, my partner and I placed first in the NRA's Police Combat Championships. While I feel strongly that law-abiding citizens should be able to possess firearms, I feel more strongly that criminals should be denied access to them. I am proud that the IBPO supports both the DeConcini Assault Weapons Ban and the Brady Bill. Enacting common sense measures such as these are one part of the solution to combatting crime and drugs here in America.

It is clear as well that the federal government must play a

large role in fighting crime and administering justice in the country. However, in our opinion, solutions to the crime and drug problem do not reside in federalizing crimes. Ms. Baird, from her prior experience with the Department of Justice, knows that this has been a preeminent, though flawed solution to the crime and drug problem in our country. We discussed with her our opinion that the primary role of the federal government in fighting crime is to provide the resources--through appropriations, information-sharing, coordination of federal-state task force activities, and other supportive efforts, to the state and localities to accomplish those objectives.

Ms. Baird recognizes that state and local law enforcement accounts for an overwhelming percentage of the arrests, prosecutions, and incarcerations in the country and recognizes the importance of the Department of Justice as a coordinator, facilitator, and administrator. Ms. Baird understands that resources must be divided among those who arrest, prosecute, and incarcerate in order for law enforcement efforts to succeed. I might add, Mr. Chairman, that our fastest growing sector of representation is in the corrections field. As the International Brotherhood of Correctional Officers (IBCO), we represent 20,000 correctional officers. In this regard Ms. Baird displayed a willingness to continually involve state and local law enforcement in the planning of Department of Justice policy in order that our efforts in one area will not be frustrated by lack of dedication in another. We think that Ms. Baird, a tough manager and skilled planner, is the ideal choice to end the infighting between federal agencies and reexamine the role between the federal government and the states and localities. In this manner Ms. Baird will not only be a tough advocate for law enforcement on Capitol Hill but also will provide the administration skills necessary to implement the laws once they are passed.

In addition, we spoke with Ms. Baird about the importance of having law enforcement officials fill some of the other important

posts within the Department of Justice. Ms. Baird continually stressed her willingness to solicit and receive information and advice from our organization and from other law enforcement leaders. Ms. Baird indicated that crucial to the success of the Department of Justice is that law enforcement and the public respect the Justice Department as a non-partisan administrator of justice. The IBPO is confident that Ms. Baird will be responsive and receptive to law enforcement's concerns and ideas, and will evaluate our suggestions based on merit.

In short, Mr. Chairman, we are not only thoroughly impressed with the qualifications that Ms. Baird brings to the office of Attorney General but also with her commitment to the future of law enforcement in America. Her direct, accessible approach bodes well for a productive and honest relationship with the law enforcement community. This type of relationship is crucial to achieving the goals that all of us here today share: a safer America for all.



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AFL/CIO



January 15, 1993

Honorable Joseph Biden
Chairman, Committee on Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Biden:

The International Brotherhood of Police Officers is an affiliate of the Service Employees International Union, the fourth largest union in the AFL-CIO. The IBPO represents more than 40,000 federal, state, and local, rank and file law enforcement officers in the United States. On behalf of the membership of the IBPO, I am pleased to announce our unqualified support of Ms. Zoe Baird's nomination for the position of Attorney General.

In a meeting with IBPO leaders, Ms. Baird demonstrated her firm grasp on the issues crucial to law enforcement, and importantly, she indicated her willingness to solicit and receive information and advice from our organization. Thus the IBPO not only is impressed with Ms. Baird's professional qualifications to serve in the upcoming administration, but also with the accessible, direct approach she exhibited in introducing herself to the law enforcement community.

Significantly, Ms. Baird also recognized the need of the Department of Justice to focus immediately on the issues pertaining to crime, drugs and guns which remained unresolved at the conclusion of the 102nd Congress. Moreover, Ms. Baird pledged to consult with law enforcement organizations on appointments related to our area of expertise. Law enforcement leaders have come away with a strong positive impression of Ms. Baird and her ability to lead the Department of Justice.

In short, judging from her past record and her commitment to the future, we find Ms. Baird a superb choice for Attorney General. The IBPO endorses her nomination and urges her swift confirmation by the Judiciary Committee and the full Senate. We look forward to working with Ms. Baird in the years to come at the Department of Justice in confronting the many challenges which law enforcement faces.

Sincerely,

Kenneth T. Lyons
National President

Statement by Ralph Nader
On the nomination of Zoë Baird
For the Office of Attorney General of the United States
Before the Senate Judiciary Committee, U.S. Senate,
Washington, D.C. January 19, 1993

Mr. Chairman and members of the Senate Judiciary Committee, thank you for the opportunity to render some observations, in the short time available, regarding the nomination of Zoë Baird to the office of Attorney General of the United States. The Advice and Consent authority of the Senate (Art. 2, Sec. 2) has been exercised historically within wide latitudes of interpretation and seriousness ranging from perfunctory to profound performances. Witnesses who come before such Committees receive little direct guidance as to what level of thoroughness and deliberation either the Committee or its individual members are contemplating. So they are left with their knowledge of the Committee members, its past record and contemporary behavior.

For major nominations, submitted by a new President, one can expect different approaches among the members. These approaches usually fall within the following characterizations: (1) Those members who believe that the President deserves his own team, unless the nominee has a felonious or grossly ill-prepared background; (2) Those members who believe that character, experience and qualifications matter greatly; (3) Those members who stress the political ideology and past occupational associations of the nominee and the positions taken thereto; and (4) Those members who have personal, geographical or tactical reasons to subordinate their doubts about the nominee.

While the positions of Committee members may reflect more than one of these approaches toward the nomination of Zoë Baird, it would not be surprising for many Senators to be puzzled. One Senator said: "I can't understand why they chose her." To be sure, the circumstances were favorable for the nominee. She,

among the several women considered for the post, has the most powerful, well-positioned and persistent backers, including Warren Christopher, Lloyd Cutler, Ronald Brown and General Electric's Jack Welch. But further reflections are necessary to address the reasons as to "why" this nomination.

Why would Bill Clinton choose a person from companies whose outspoken views on health insurance, environmental policy, antitrust law, military procurement fraud enforcement, the day-in-court rights of harmed persons, and other subjects within the Justice Department's purview, are so contrary to his public positions? Certainly, he could not have believed that she was simply advancing these views for the money that her corporate clients and employers were paying. He must have known that she believed what she said. Her mentor, attorney Lloyd Cutler, spoke for many corporate lawyers when he declared back in the mid-Seventies: "There is one point I want to make clear: we believe in the arguments that we make."

For example, Bill Clinton issued a powerful condemnation of the insurance industry, on the hustings and more briefly in his book *Putting People First*. He proposed: "Ban underwriting practices that waste billions trying to discover which patients are bad risks; *prohibit companies from denying coverage to individuals with pre-existing conditions; protect small businesses through 'community ratings,'* which requires insurers to spread risks evenly among all companies." Zoë Baird and Aetna are in total opposition to any plan for health care reform that does not maintain and maximize the corporate insurer role.

Bill Clinton came out fighting against the Quayle demands that restricted the rights of injured and sick people against the wrongdoers who harmed them. On August 27, 1992, the Clinton/Gore campaign declared:

Once again, George Bush and Dan Quayle have shown that they will go to almost any lengths to protect the big polluters and insurance companies that fund their campaign. They have sided with manufacturers of dangerous products, not consumers; insurance companies instead of injured workers. The Quayle proposal is supported by big business lobbyists of every pinstripe, and opposed by consumers, senior citizens, workers and victims. It won't help competitiveness or ensure responsible behavior in the marketplace.

Bush and Quayle want to slam the door in the face of the one million women who have been put at risk by silicone breast implants, the hundreds of thousands of workers who suffered from asbestos exposure, and the victims of dangerous products such as the Dalkon Shield. That's not surprising. Bush and Quayle are heavily bankrolled by the chemical companies, pharmaceutical manufacturers and insurance companies that would reap a windfall from keeping victims at bay.

Of course, this is part of a pattern. Bush and Quayle's Council on Competitiveness offers a back door for powerful interests to hotwire the system, letting polluters gut or delay environmental rules they don't like. It's no surprise that Quayle's legal proposals were drafted by the Council on Competitiveness.

These proposals are radical and wrongheaded. Bush and Quayle want to cap the ability of juries to award victims punitive damages, even when that's the only way to bring a powerful offender to justice, or to keep a dangerous product off the market. They want to make victims pay the legal fees of big manufacturers if, for some reason, they sue and lose. It's nothing more than trickle-down justice.

Our legal system is not perfect, and Governor Clinton supports reforms such as alternative dispute resolution to give consumers redress without having to go to court. But he does not support proposals that pretend to "reform" lawsuits while actually encouraging dangerous products or marketplace fraud....

In sharp contrast, Zoë Baird praised the Quayle demands and participated in the long-standing Aetna aggression against the rights of injured Americans to have their full day in court before judge and jury. This aggression, which continues unabated, pushes to federally regulate state and federal courts and juries so as to restrict, hamper or block the full right of these

unfortunate citizens to traditional common law rights and remedies. Through its extensive advertorials filled with lurid jeremiads and phony assertions, and its work with such lobby groups as the Product Liability Alliance and the misnamed Citizens for Civil Justice Reform, Aetna continues to earn its reputation as the worst of the insurance industry -- an embarrassment to some insurers who consider loss prevention and providing consumer information a superior route of activity. And there was Attorney Baird in the front lines of the Aetna battalions. She worked with the task force set up by the Quayle Council to espouse such retrograde policies as establishing a "loser pays" system that benefits the wealthy, in which the loser in a lawsuit pays the attorney's fees of the winner, punitive damages are capped at the amount of compensatory damages and the practice of courtroom secrecy agreements, which often keep critical health and safety information from the public, is kept in place.

In her "Great Performers" speech, Baird said, "[T]he tort system is having a debilitating effect on America's competitiveness." Compare this assertion with that of the Clinton campaign: "[The product liability bill] won't help American competitiveness or ensure responsible behavior in the marketplace."

At the state legislative level, Aetna has supported arbitrary caps on damages -- which of course hurt the worst injured claimants -- and other statutory restrictions on the courts, such as compulsory periodic payments and defenses known as state of the art and compliance with government standards as bars to liability. Aetna supported the notorious early versions of the Kasten legislation in the early Eighties, which would have severely limited corporate liability for dangerous products. The company's positions on limiting the rights of victims of medical malpractice are downright cruel.

Aetna's complicity in the notorious Dalkon Shield coverup, documented by *Washington Post* veteran reporter, Morton Mintz, (author of *At Any Cost: Corporate Greed, Women, and the Dalkon Shield*) preceded Attorney Baird's tenure. But she must have known of this widely publicized episode when she chose to join her time and energy with Aetna's, not to be part of a new conscientious Aetna, but to promote the old crass Aetna, albeit with some new organizational charts.

Such behavior is characteristic of a company that refuses to recognize how few wrongfully harmed persons ever obtain any compensation from perpetrators, much less even get a lawyer to represent them. For example, the annual compensation, by verdicts and settlements, for Americans injured by product defects amounts to less than what is spent annually on dog food. From data compiled by both university and government studies over the years, probably less than one in ten persons, who have been significantly victimized by medical malpractice, receives any compensation. The problem, Mr. Chairman, is not too much justice; it is too little justice.

For twelve years, the federal government was ruled by men who were antagonistic to citizens availing themselves of their rights against corporations. Corporate lawyer after corporate lawyer headed the Justice Department and many of its divisions. Many who voted for Bill Clinton agreed with him that it was time to "put people first," to have the "courage to change." But an Aetna and former General Electric lawyer got to the Justice Department first. Entering government service "doesn't mean you check your experience at the door. That will be very helpful to us and the country," declared an elated official of the American Insurance Association in noting the Baird nomination. Yes indeed, we understand what that means, don't we? Remember what Charlie Wilson of General Motors said in the Fifties?

Before moving to Aetna, Attorney Baird was in-house counsel to General Electric. For a daughter of a trade union organizer to work for General Electric requires an act of conviction.

In the literature on corporate crime, General Electric is known as a corporate recidivist. Alas, notwithstanding its prolific internal statements of conduct and compliance, General Electric finds itself crossing the law repeatedly. One law that both General Electric and Zoë Baird do not like is the False Claims Act of 1986. This act, coming off Congress's response to public revulsion over military contracting fraud, waste and abuse, gives whistleblowers a real but not easily obtained right to initiate the process of law enforcement in order to recover for the government unjustly retained monies and receive a percentage of the recovery.

Zoë Baird zealously fought in the late Eighties to have Congress weaken the 1986 law. She should inform the Committee whether she has challenged the constitutionality of its critical *qui tam* provisions. The "voluntary disclosure" approach she espoused became part of a General Electric strategy *vis-a-vis* the Justice Department on numerous cases that the Committee may wish to inquire about further. Attorney General William Barr delivered his views of the False Claims Act before the American Corporate Counsel Association on October 29, 1992. They have a stark resemblance to views expressed by Zoë Baird. It would be most instructive were the Committee to request that Attorney Baird comment on whether she now agrees or disagrees with his positions. That would clarify how her views compare with Bill Clinton's repeated declarations to let people participate in reforming their government and in protecting the taxpayers' dollars from predations of corporations.

It could just be that the gentleman from Hope, Arkansas, is

contemplating an unprecedented conversion by the General Electric and Aetna Insurance lawyer on arrival at the Justice Department. While hope springs eternal, there is little that the secular contemplations of a confirmation hearing can do about such expressions of faith.

For Senators who especially value character, experience and qualifications, the nomination raises predictable invitations to more expressions of hope. It is not just that Attorney Baird has been an outside corporate lawyer and corporate counsel for her fifteen years out of law school, and has no experience in criminal prosecution, civil rights, antitrust and other areas within the Justice Department's jurisdiction. It is that what relationship she does have to many of the Justice Department's sections, unfortunately, pertain to the matter of her recusals. She has represented companies involved with the Justice Department in antitrust and environmental (Superfund and toxic waste) matters. Recently, she has been personally introduced to the Immigration and Naturalization Service, to the editorial chagrin of *The New York Times* and *Washington Post* (herein attached), among other commentary. She supports the McCarran-Ferguson antitrust exemptions for the insurance industry. She and her husband have participated in a New Haven, Connecticut Neighborhood Association that is a defendant in a Justice Department civil rights suit. There may be more instances, given the very modest public record thus far of the nominee's multiple activities.

Attorney Baird is quoted in the *Washington Post* as saying that she would recuse herself from cases and issues that have a "direct and predictable effect" on Aetna or General Electric. Just what does that mean? Does it relate only to specific cases involving these companies, or is there a penumbral extension, such as, for example, in the area of health insurance or health

care fraud? Is she going to recuse by the case, or by the company, or by the subject matter, or by the particular statute? The Committee should request of her a more extensive appraisal and definition of recusal than simply the "direct and predictable" approach.

Some Senators on the Committee may be impressed with the exuberant praise accorded Attorney Baird by Terry Eastland of the Reagan Justice Department, William Kristol, Quayle's Chief of Staff, Victor Schwartz of the corporate lobby to weaken rights of the wrongfully injured, and a wide assortment of Reagan/Bush officials. Among others, the insurance industry and the bull terriers of the *Wall Street Journal* editorial page can scarcely conceal their delight. Do you think they believe she will be doing a 180-degree turn on her pre-December 1992 beliefs? They certainly don't sound as if they do. And they are probably correct in that impression. Attorney Baird had a very diverse choice of employment opportunities when she left the government in January 1981. She could have chosen to represent workers, consumers, small businesses, entrepreneurs or the environment in the commercial, non-profit or public agency arenas. Instead she chose to represent, as is her right, corporations, mostly large corporations, first at O'Melveny and Meyers, later at General Electric and then at Aetna -- two corporations that would rank very low by any standard of corporate responsibility and public prudence. This is how Attorney Baird chose to spend her legal career and direct her professional priorities in society.

The recent election period provided politicians with ample amounts of citizen despair, revulsion and resentment at the way powerful economic, mostly corporate, interests, dominate the government. "We have no control over our government" was the composite complaint of Americans -- liberal and conservative, north, south, east and west. The corporate-shaped government in

Washington is one of subsidies, tax breaks (of which General Electric was the top recipient under the 1981 tax law), bailouts, giveaways, large cancelled debts, lax corporate law enforcement, inflated government contracts, campaign finance sleaze, revolving doors, politically selective law enforcement, and, yes, too much outright corporate-induced corruption, scandal, waste and mistreatment of honest civil servants. Just read some of the outstanding newspaper features and numerous General Accounting Office reports for starters if memories need to be refreshed.

Last year, members of Congress and Presidential candidates went around the country pleading for the votes of tens of millions of ordinary working and unemployed Americans. "If elected, you can count on us," said the candidates. Once back in Washington with a new administration in transition and about to take office, few representatives of ordinary people (meaning leaders with a proven record of regular defense and advocacy for these people) are finding their way to the upper echelons of the executive branch. Instead, once again, members of the big business community of interests fill the transition teams and are on their way to high level appointments from corporate law firms, trade associations and corporations. It hardly needs saying that these narrow interests often pursue policies grossly inimical to the general interest of people and society. The forces that allegedly won end up losing and the forces that allegedly lost end up winning. A new fusion political party is being born -- out of the embracing Democratic and Republican Parties on issues of economic power and concentration there comes forth the DEMICAN Party to confirm the nominee for Attorney General.

Now, with the Justice Department, the subject of serious criticism for what it does and does not enforce and how it treats the civil liberties, civil rights, and economic and health and safety rights of the American people under the laws of the land, why not the best? With the Justice Department's Antitrust

Division miniaturized and in shambles during an era of massive mergers and acquisitions, why not the best?

Why not an individual with a career-proven record and commitment representing the urgent and sensitive needs of justice for those Americans with no campaign money to give, no paid lobbyists to influence Washington, no plants to threaten to close down and move abroad, no fancy bi-partisan limousines on the way to lush watering holes to offer. Instead of tapping the large pool of such praiseworthy candidates, the President-elect nominates a General Electric/Aetna lawyer whose principal assurance to this Committee is that she is switching clients. Mere words may presage conversion. But history has shown that it is the previous record of commitment to the public interest that is the best predictor for an office that is supposed to have an experienced dedication to justice for the excluded, the defenseless, the abused and the forgotten citizenry. Zoë Baird is not the answer to the question: Why not the best or even why not better? Bill Clinton can do better. Her nomination should not be confirmed.

"The courage to change" by "putting people first" has not been followed by "the courage to nominate." Whatever your approach to Presidential nominations, the members of this committee have an obligation to provide the public with a substantial record of the nominee's career, positions, philosophy, capabilities and critics -- and print such hearings in a timely fashion. Such a record can elaborate your own evolving standards for nominations as well as the standards by which you and the citizenry can judge her subsequent performance.

Permission to submit attachments to this testimony for the printed record is requested of the Chair.

Thank you.

The Washington Post

AN INDEPENDENT NEWSPAPER

The Law and Zoe Baird

ZOE BAIRD, the incoming president's choice to be attorney general, will go to her confirmation hearing next week under a visible cloud. She has disclosed that she and her husband employed two illegal immigrants to care for their young son and that they paid no Social Security taxes on their employees' wages until after she had been named to the Cabinet. Those are both violations of the law. It's an unhappy beginning to the monumental job that awaits the next head of a department that, more than any other in the federal government, has been degraded by recent scandal and political manipulation.

Perhaps Miss Baird and her husband were the victims of bad legal advice although, since both are lawyers, it's a defense they would doubtless prefer not to offer. Another possible response is that everybody does it—or at least a lot of people do. That would win a sympathetic shrug from many parents who, desperate for inexpensive care for their small children, have similarly hired immigrants without inquiring, as the law requires, into their status.

Miss Baird, and Mr. Clinton as well, will now have to consider whether that defense is good enough. They will need to think carefully about the deeply troubling condition into which the Justice Department has fallen and ask whether an

attorney general with this limited but conspicuous mark on her own record is the right person to undertake the great cleansing and rehabilitation the department requires.

Within the department there are four serious scandals that the Bush administration has been unable and, in fact, not eager to resolve: BNL, BCCI, Inslaw and Demjanjuk—involving respectively a bank that lent to Iraq, a bank that laundered drug money, a computer program that was apparently stolen and a Ukrainian extradited on apparently erroneous evidence that he was a certain notorious guard at a Nazi death camp. Beyond these cases, there is the much larger question of the department's basic standards of fairness. This newspaper is currently publishing a deeply dismaying series of articles by Jim McGee on the latitude that the Justice Department has given its attorneys to pursue political and even personal targets.

The next attorney general is going to have to labor mightily to change many bad habits and tighten many loose practices that have become ingrained at the Justice Department over the past decade. Under the best of circumstances that attorney general will have an extraordinarily tough job, and the circumstances under which Miss Baird now faces confirmation are less than ideal.

A28

The New York Times

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Needed: Answers From Ms. Baird

The revelation that Zoe Baird, President-Elect Clinton's choice for Attorney General, hired two illegal aliens sounds like somebody's idea of a bad joke. But it's no joke. Ms. Baird would be the country's chief legal officer, overseeing a vast bureaucracy that includes the Immigration and Naturalization Service. Yet she carried out what appears to be a clear, prolonged violation of the immigration law.

Ms. Baird and the Clinton staff said there were mitigating circumstances and an attempt to follow proper procedures that made Ms. Baird's conduct acceptable. If so, now is the time to make that case, convincingly and rigorously.

After 12 years of suffering with attorneys general who were insensitive to civil rights and often to legal ethics, this country needs the assurance that with a new President who pledged his government would be better, the Justice Department will be in the hands of someone with unimpeachable standards.

Senator Joseph Biden Jr. and his Senate Judiciary Committee have an obligation to press for a full accounting before making a final judgment as to Ms. Baird's fitness to be Attorney General. The country cannot afford, and Mr. Biden's reputation cannot stand, another tardy, unfocused inquiry like that produced by his committee in the Clarence Thomas hearings.

Some of the details surrounding Ms. Baird's conduct are in dispute, but not the substance. Two summers ago, she hired a Peruvian couple who were living in the United States illegally. The wife worked for Ms. Baird as a baby sitter until just after the November election, the husband until last March as a part-time driver. Ms. Baird, a lawyer with Aetna Life and Casualty in Connecticut, and her husband, Paul Gewirtz, a constitutional law expert, did not pay Social Security taxes for either until they made a lump-sum payment this month.

Ms. Baird told the Clinton transition team that she and her husband did not pay the taxes earlier on the advice of a lawyer, and that the same lawyer said hiring the couple was permissible because she was sponsoring their citizenship. Ms. Baird did get the Labor Department's certification for the wife, and, transition officials say, last October the Immi-

gration and Naturalization Service approved her request to put the woman on a list for a green card. No application was made for the husband because once his wife won legal status, he would receive it automatically, according to lawyers advising the transition team.

The F.B.I., now conducting a background inquiry, will presumably sort out the conflicts and provide more details. But it cannot smooth out the legal and ethical problems raised by Ms. Baird's conduct. What she did is common practice among professional families who employ domestic workers. But it remains troubling and potentially disqualifying conduct for an Attorney General-designate.

On the facts, Ms. Baird appears to have broken the broadly publicized Simpson-Mazzoli law of 1986 that, in exchange for granting amnesty to millions of illegal aliens already here, clamped down on hiring recently arrived illegal immigrants. Surely she and her husband, as lawyers of national reputation, realized the implication of what they were doing, no matter what another lawyer advised. If there was no violation, next Tuesday's hearings must make that clear.

That Ms. Baird knows she has a problem is evident. It is difficult to believe that the timing of the lump-sum tax payment — this month — was a coincidence. Moreover, she clearly knew something was amiss, since she disclosed the information to Mr. Clinton before her nomination, to the F.B.I. and then to Senator Biden and the Judiciary Committee. Disclosure is healthy but does not erase the problem. Mr. Clinton, for all his promises of setting higher standards, has obviously decided to look the other way. Mr. Biden and his colleagues — anxious to avoid inciting the ire of women still angry about his committee's offensive questioning of Anita Hill — seem prepared to do the same. It is not even clear that senators will question Ms. Baird about the matter at her confirmation hearings.

The Clinton campaign argues that the paper trail will show that Ms. Baird acted in good faith, which would be welcome news. But anything short of providing an honest and convincing explanation has to disqualify Zoe Baird from the office for which she otherwise has impressive credentials.



TESTIMONY OF

J. ROBERT HUNTER,
PRESIDENT

NATIONAL INSURANCE CONSUMER ORGANIZATION

BEFORE THE
JUDICIARY COMMITTEE
OF THE
UNITES STATES SENATE

REGARDING THE NOMINATION OF MS. ZOE BAIRD

FOR ATTORNEY GENERAL
OF THE
UNITED STATES OF AMERICA

January 19, 1993

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

Good afternoon, Mr. Chairman and members of the Committee.

My name is J. Robert Hunter. I am President of the National Insurance Consumer Organization. I formerly served as Administrator of the Federal Insurance Administration under Presidents Ford and Carter. Prior to serving as Administrator, I served as Chief Actuary of the Federal Insurance Administration for several years. I have worked in insurance for 35 years.

I appear here today to recommend that you reject the nomination of Ms. Zoe Baird as Attorney General of the United States. I do so reluctantly because I believe it is high time we had a woman in that post. I am also reluctant to oppose her because I do not know her personally and I am not an attorney so I am not capable of assisting you either on points about her abilities nor on legal matters. I am also reluctant because, although I routinely criticize insurers and the industry, I have not criticized an individual before and I find that difficult to do.

But I do know insurance, and I do know Aetna, I do know the corporate culture that she voluntarily joined and from which she is coming. It is a culture that I believe raises serious questions about the candidate. I am further convinced that if she keeps her promise to recuse herself from matters that have a "direct and predictable" effect on her two most recent employers, GE and Aetna, Her effectiveness will be greatly diminished.¹ I will first discuss recusal, then the Aetna record before and after Ms. Baird arrived.

The Recusal Promise -- What Does It Mean?

I respectfully submit that this Committee, Mr. Chairman, has a vital duty to get on the record a clear list of areas from which Ms. Baird will recuse herself. You owe this to the public. You owe this to Ms. Baird as well. I have no idea what this means for GE, nor have I looked into Aetna's list of non-

¹ Washington Post, January 16, 1993, Page A-12.

insurance affiliates or investments to determine what recusal might mean in those areas. I did, however, give some thought to what it might mean for Aetna's insurance operations. Here is a short list of important insurance areas where, I believe, a specific recusal promise is required:

National Health Insurance

Clearly, Aetna has a "direct and predictable" interest in the current debate over the nation's health care system. Like any profit-making organization, Aetna wants to maximize its role in any new system that is proposed. There are some very compelling public policy reasons to reduce or eliminate the nature of private risk bearing as part of any genuine reform. This is not to say that I favor a government bureaucracy to service insurance claims. I don't. But some do and clearly Aetna's position is self-serving.

Ms. Baird has espoused Aetna's position in speeches you have before you.² I happen to agree with some of that she said, but not all of it. Some key people in the health care debate would totally disagree with Aetna's position.

Will Ms. Baird promise to recuse herself from development of the health insurance policy of the Clinton Administration? I believe she must if she is to keep her promise.

Civil Justice "Reform"

a) Tort Reform

Aetna has long been a leader in attempting to obtain what it calls "tort reform". Ms. Baird "helped draft federal legislation unsuccessfully to limit jury awards in product liability suits."³ To many in Congress, state legislatures and at consumer groups, Aetna's actions constituted an all out assault on the legal rights of America's citizens in an attempt to favor

² Aspen Institute, June 13, 1992.

³ "Zoe Baird, A Fox In The Chicken Coop," Bruce Shapiro, L.A. Times, June 7, 1992.

corporate wrongdoers. I will detail their actions in a few minutes.

Whichever side you take on the "tort reform" debate, there should be no debate that the outcome of any proposed change in the legal rights of victims will have a "direct and predictable" effect on Aetna.

Does Ms. Baird's promise to recuse herself extend to all discussions of change in the civil justice system? I believe she must if her promise is to have any meaning.

b) No-Fault Auto

I happen to oppose, vigorously, Aetna's brand of "tort reform" where it come to things like Products Liability. I see Aetna as spearheading an attempt to reduce victims' rights with no quid-pro-quo; I see the attempt as trying to favor a large corporation with access to lawyers over individual citizens and thus imbalance the legal scales; I see a need for uncertainty in the process so that a legal deterrent against, say, a manufacturer of a product will load to safer products.

However, I happen to agree with Aetna that high benefit no-fault auto laws of the Michigan variety are a good idea. No-fault has a quid-pro-quo, there is no power imbalance in auto cases and there are more important reasons for safe driving than the legal regime. I worked to see that both Presidents I served under supported national no-fault auto plans.

However, many disagree with Aetna and me on no-fault. No-fault auto would have a "direct and predictable" effect on Aetna. Ms. Baird should recuse herself from any such discussions.

Antitrust

a) McCarran-Ferguson Act

As this Committee knows, the issue of the insurance industry's antitrust exemption is an important political matter before you. The McCarran-Ferguson Act grants a broad exemption to insurers from antitrust law.

A large coalition of groups support repeal or amendment of

the McCarran-Ferguson Act. They include such diverse groups as the American Bar Association, the American Nurses Association, the American Bankers Association, the American Association of Retired Persons, the National Association of Retail Druggists, AFL-CIO, consumer groups and many others. Several of the member of this Committee agree with us that reform should occur.

But, Aetna -- and most other insurers -- oppose reform; several of this Committee's members agree with them.

We know this will come up again this year because Jack Brooks, Chair of your counterpart Committee in the House, has introduced H.R. 9 to reform the McCarran-Ferguson Act.

Whether you agree or disagree with me on the substance of this issue, you must surely argue that the reform of McCarran-Ferguson is a matter that has a "direct and predictable" effect on Aetna. Will Ms. Baird recuse herself on this issue?

b) Nineteen State Action Against Aetna and Others

As I will detail below, Aetna stands accused by 19 States of antitrust violations. The states allege "conspiracies, boycotts, threats, intimidation and other coercive conduct by the insurance industry defendants to restrict availability of certain coverages under policies for commercial general liability insurance and property insurance."⁴

This matter is before the U.S. Supreme Court. The Department of Justice has filed an amicus brief supporting the 19 states. Ms. Baird has led Aetna's legal defense battle against the states.

This matter has an obvious "direct and predicable" effect on Aetna. Ms. Baird should recuse herself from all decisions relating to this case.

Other Areas

The above is hardly an exhaustive list of areas where actions by the Attorney General would have a "direct and

⁴ Report 102-1036, House Commission on the Judiciary, October 6, 1992, Page 44.

predictable" effect on Aetna's insurance operations. Insurance is so important in American it is difficult to know what doesn't have a direct effect on it. Aetna is the fifth largest insurer in the nation, with \$16.9 billion in premiums in 1991.⁵ Inflation impacts insurance directly. Stock market and bond market decisions are key given the remarkable holdings of Aetna in its portfolio. The shape of economic reform may well "directly and predictably" impact Aetna. The Committee should review those stock, bond, real estate, and other holdings of Aetna in which they have substantial ownership to determine what actions that the Attorney General might make would have a "direct and predictable" effect on Aetna. Aetna's affiliates also should be reviewed as should GE and its affiliates (including NBC).

Conclusion on Recusal

Both Ms. Baird and the public deserve a clear listing of the areas where she will not involve herself if confirmed. To not do so will surely lead to trouble later.

Once the full list of recusal areas is available, it may well be that this nominee will be so restricted that she or this Committee will agree that the nomination should not go forward. We won't know until a full exploration of Aetna's and GE's vast interests is complete.

AETNA

a) Before Ms. Baird:

I could deliver very long testimony on Aetna prior to Ms. Baird's arrival. I won't but I will give you a flavor of the insurer.

Aetna is the only insurer that the National Insurance Consumer Organization has ever run a campaign against. In the 1981-1983 period, NICO had an "Avoid Aetna" campaign Because of what we saw as its anti-competitive leadership, particularly in

⁵ A.M. Best, Aggregates and Averages, 1992 Edition, Page 334.

auto insurance prices.⁶ In October of 1989, Ralph Nader called Aetna "the worst in the industry" in terms of consumer relations and its anti-victim advertising.⁷ What sorts of behavior resulted in these negative assessments.

i. Victims' Rights Assault

For many years, Aetna had been one of the two leading proponents (American International Group being the other) of so-called "tort reform," espousing limitations on people's right to sue of many kinds and knowingly choosing anti-victim solutions to perceived problems.⁸ It ran a major series of advertisements, containing inflammatory and misleading anecdotes, to try to convince America that there was a "lawsuit crisis."

Aetna may have gotten its anti-victim attitude from its experience as insurer of A.H. Robbins in the Dalkon Shield case.

As reported, "Aetna played two major roles in the Shield story, one out in the open and one behind the scenes. For more than seven years after Robbins bought the Shield in June, 1970, Aetna routinely provided product-liability insurance. But with the rising tide of claims and lawsuits, Aetna began to work actively backstage with Robbins to conceal the menace that the Shield posed to public health."⁹

⁶ See, e.g., "Insurance Boycott Urged," Hartford Courant, April 24, 1981.

⁷ National Underwriter, October 30, 1989. A set of Aetna advertisements espousing "tort reform" is being made available to the Committee Chair.

⁸ For example, while it may be true that victims should not collect twice for the same injury, Aetna pushed for collateral source rule changes that would use the victim's health insurance proceeds to lower the wrongdoer's liability (and thus, liability premiums for tort-feasor corporations) rather than wrongdoer's insurance pay back the victim's insurers (and thus lower health insurance prices for people). Another example was Aetna's strong support for changes in joint and several liability so that partially guilty corporate tort-feasors would get off the hook if another tort-feasor could not pay, but Aetna would let this cost burden fall on the totally innocent citizen instead. Aetna thus supported a shift of cost from large corporate wrongdoers to innocent individuals.

⁹ At Any Cost, Corporate Greed, Women and the Dalkon Shield, Morton Mintz, Pantheon Books, 1985. See Also, Dangers Insurance Companies Hide - Insurance Companies Don't Have To Tell You When They Know You're About To Be Killed, Morton Mintz, Washington Monthly, January/February 1991.

Because of the economic cycle of property/casualty insurance, there are periodic price rises, which in the mid-1970's and the mid-1980's were known as "liability crises." These crises were used by Aetna and other insurers not only as an opportunity to incredibly increase prices and profits, but also as an opportunity to try to reduce legal rights of individual Americans. Aetna led the insurer and manufacturer charge in the mid-1980's to weaken the legal position of citizens vis-a-vis large corporations. Prior to the crisis, Aetna President William O. Bailey said that "clearly another round of price increases is absolutely necessary for the business," and that "the time is right to start engaging in some serious efforts for tort reform."¹⁰ A few months later, the industry's Insurance Information Institute (of which Aetna was a member), initiated a \$6.5 million advertising campaign designed, in III's words, to "change the widely held perception that there is an insurance crisis to a perception of a lawsuit crisis."¹¹

During this latest crisis, Aetna and several other insurers conspired not only to raise prices (which is legal under the McCarran-Ferguson Act) but went beyond mere price-fixing to undertake an alleged illegal boycott to cut coverage to commercial insureds, according to an antitrust action brought by 19 states.¹² All the while, Aetna ran ads in which it blamed the legal system for the crisis, in full knowledge of the conspiracy of insurers it led and of the normal functioning of the insurance industry's economic cycle.

Aetna undertook a massive effort to deprive victims of their legal rights both in national legislation and in state-by-state efforts. It is clear that, while Aetna's strategy was to cut

¹⁰ Business Insurance, June 10, 1985, Page 3.

¹¹ Journal of Commerce, March 19, 1986, Page 1.

¹² Hartford Fire Insurance Co., et al v. State of California, et al; Merritt Underwriting Regency Management Ltd. et al v. State of California, et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

victim's rights, it either intended to pocket the savings or knew that there were no savings. We know this because the State of Florida, when enacting tort law changes in line with those Aetna was pushing, required insurers to make rate filings to show the savings of these reforms in rates. Aetna found virtually no savings, a point it had failed to make during its lobbying against victim rights in Florida and throughout the nation.¹³

This anti-victim attitude was an entrenched part of the corporate culture in 1990 when Ms. Baird accepted the top legal position at the company.

ii Consumer Rights Assault

Aetna, just prior to Ms. Baird's arrival, stopped selling individual health insurance policies.¹⁴ This anti-consumer action was in the news as she decided to go to work for this giant insurer. It is hardly the action of an insurer whose views should be given great weight in our national health insurance debate.

Aetna spent, in 1988 in California, \$1.3 million of its policyholder's money (it bills this in its overall expense loads to consumers) fighting Proposition 103, the consumer initiative, according to state records. It had begun to emerge as a leader in the attack on any consumer reform efforts by 1990.

b) After Ms. Baird

I. Legal Efficiency/Attitude

The most recent available data show a sharp increase in legal (defense) costs at Aetna since Ms. Baird arrived, particularly in lies where individuals are the insureds (personal auto and homeowners). The following table shows the loss adjustment expense, which includes defense attorney costs, as a percentage of premium:

¹³ See NICO press release, "Tort Reform A Fraud, Insurers Admit," October 20, 1986, attached.

¹⁴ Insurance Management Reports, A.M. Best and Co., March 26, 1990.

Calendar Year	<u>All Lines</u>		<u>Pers. Auto Liab.</u>		<u>Homeowners</u>	
	<u>Aetna</u>	<u>Industry</u>	<u>Aetna</u>	<u>Industry</u>	<u>Aetna</u>	<u>Industry</u>
1989	16.2%	12.7%	12.6%	13.5%	9.7%	11.2%
1990	16.4	12.9	15.1	14.0	10.9	10.8
1991	17.7	12.6	20.4	13.8	16.8	11.5
Change	+ 9.3%	- 0.8%	+61.9%	+ 2.2%	+73.2	+ 2.7%

This monumental increase in cost of handling personal claims for Aetna but not the industry could be the result of inefficiencies in Ms. Baird's legal department or of a changed attitude whereby the Aetna is more apt to stonewall claimants and cancel policies. We get a clue from a review of Consumer Reports Magazine. In 1988, Aetna ranked 35 of 51 companies reported.¹⁵ Their handling of claims was average. In 1992, Aetna ranked 41 of 49 surveyed, and their claim handling has slipped to below average.¹⁶ In 1988, the five best service insurers had personal auto loss adjustment expense of 13.3% while the Aetna Group had 10.5%. In 1991, the five best service insurers had loss adjustment costs of 16.2% while the Aetna group used 20.4% of premiums to settle claims. It seems that Aetna is pending more for a worse result. Another clue is found in an attitude of consumer (and agent) be damned as Aetna has pulled out of auto insurance in at least 22 states.

ii Victims' Rights

Ms. Baird and Aetna have continued to push for product liability victim's restrictions here in Congress. Aetna, in a move reminiscent of Florida (where they did not point out that no savings in premiums would accrue if victim's rights were removed), conveniently failed to point out to Congress that insured premiums for product liability lawsuits totalled only fourteen one-hundredths of one percent of sales income on those products. Year after year Aetna pushed for product liability restrictions on victims, even claiming that America's competitiveness was at risk by monstrous jury verdicts. Never

¹⁵ Consumer Reports, October 1988 Edition, Pages 628, 629.

¹⁶ Consumer Reports, August 1992 Edition, Pages 490, 491.

was any data produced to prove their point, however. Finally, in 1992, the National Association of Insurance Commissioners (NAIC) required the reporting of such information. Still Aetna did not produce the information. NICO had to do that in a press release, dated September 8, 1992.¹⁷ Why did Aetna, and the other insurers lobbying for limits on victim's rights, cover up these remarkably low product liability costs?¹⁸

Aetna, with Ms. Baird, has supported Vice President Quayle's "Agenda for Civil Justice Reform in America," another attempt to restrict victim's rights, including such anti-victim ideas as possible financial penalties for refusing settlement offers, loser pay rules, gag rules that keep other potential victims from being warned (under the euphemism "trade secrets"), requirements of "widely accepted" theories from experts (thus making experts captive of industry domination), caps on punitive damages, and so on.

It is extremely troubling to contemplate an Attorney General whose most recent corporate background was leading the charge against victim's rights for Aetna, a corporation that misled America into believing there was "a lawsuit crisis" when there was only an economic cycle. How will Ms. Baird treat victims rights, as opposed to corporate rights, as the nation's leading enforcer of legal rights? This paramount question should be a major focus of this hearing.

iii The Anti-Consumer Attitude Intensifies

Since Ms. Baird's arrival at Aetna, the insurer has become even more adamant in its anti-consumer attitude. It is clear that the company, through lawsuit, withdrawal and stonewalling has embarked on a collision course with consumer interests as

¹⁷ Product Liability 1991 Calendar Year Experience; NICO, which concluded that total elimination of product liability insurance would save only fourteen one-hundredths of one percent of the cost of products.

¹⁸ Product Liability, 1991 Calendar Year Experience, National Insurance Consumer Organization, September 8, 1992.

consumers, in the wake of California's Proposition 103 success, try to reform insurance regulation in the states.

Take auto insurance as an example. Starting at the time Ms. Baird arrived on the scene at Aetna, May, 1990, the insurer began its "hardball" tactics. To its credit it admitted it, even back then:

In Massachusetts, the company is challenging two state laws that control its exit from auto-insurance market. As part of that effort, Aetna has hired a top constitutional scholar from Harvard University for its legal team.

In Pennsylvania, the company has temporarily halted its withdrawal from the market until state regulators rule on its rate filing later this week. In New Jersey, the big insurer is protesting a new law that would force insurers to pay nearly half of the \$3 billion in the state's insurance pool for high risk drivers.

Moreover, Aetna has stopped writing policies in Rhode Island, and the company's plan for withdrawal from the South Carolina auto-insurance market has been approved by regulators there. In late 1988, Aetna was the only company to stop writing business in California temporarily until it could assess the impact of Proposition 103.

Several other insurers, such as Cigna Corp., Travelers Corp., and Xerox Corp.'s Crum & Foster unit, have decided to cut back on their auto-insurance businesses nationwide, or drop out entirely, and stem their losses. But Aetna's approach is deliberately more combative.

Aetna "is trying to make a political statement," says Robert Hunter, head of the National Insurance Consumer Organization. By opposing strengthened insurance regulation in states such as New Jersey and Pennsylvania, the company "wants to send a message to other states."

John J. Martin, who heads Aetna's personal insurance division doesn't dispute that assessment. "We aren't running around kicking sand in people's faces just for chuckles," he says. While Aetna isn't out to teach anyone a lesson, he adds, "we're more aggressive about asserting our right to manage our business."¹⁹

¹⁹ Aetna Takes Off Gloves In Car Insurance: Firm Leads Industry in Battling Strict State Laws, Wall Street Journal, June 7, 1990.

These "in your face" tactics that were started in mid-1990 have continued unabated today, Mr. Chairman, viz:

* In California, Aetna continues to stonewall Commissioner Garamendi on his attempts to implement Proposition 103, by administrative foot-dragging and in other ways. Aetna has even said that its own certified and sworn financial reports are not reliable for reviewing its profitability during the rollback year and has refused requests of the Commissioner for information, prompting a Department audit to obtain it.

* When Pennsylvania tried to reform auto insurance, Aetna stonewalled to the point where Governor Robert Casey filed suit against Aetna and six other leading writers charging them with concerted action designed to thwart implementation of reform.

* In New Jersey, Aetna was one of the insurers targeted as excessively expensive in audits undertaken by the State. It was ordered to pay back these excesses but has resisted.

* Aetna has withdrawn from personal auto insurance in states it says are tough in regulation (or small in size) since Ms. Baird has arrived. Among the at least 22 states where Aetna has pulled out include Arkansas, District of Columbia, Iowa, Massachusetts, Minnesota, New Mexico, Oklahoma, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming.

The Wyoming pull-out was discussed in Professional Agent magazine of October 1990, as follows:

Just two blocks from the Union Pacific tracks
-- across from Lincoln Way, the first
transcontinental road in the U.S. -- stands a
three-story brick building that boasts to
Cheyenne in black letters:

Ed Murray & Sons
Wyoming's First Insurance Agency
Since 1877

Inside, co-owner Donald Murray has a framed Aetna health policy on his office wall. The yellowed document is folded as it was when his dad walked around with it in his pocket to sell during the Depression. "We grew up on Aetna," says the white-haired Murray, 61. "We had Aetna for 65 goddamn years, we were their only reps in Laramie County, and they dropped us. Customers were rolling out the door, 60-70 policies a month. It like to make you cry."

Imagine how the insureds felt if the agent was crying!

Conclusion

Ms. Baird's record at Aetna needs full exploration by this Committee. Her strength, management, may be in question given the increase in costs since she arrived. Further, Aetna's legal hardball since 1990, has been anti-victim and anti-consumer in my view. Ms. Baird's role in these decisions must have been central

and should be explored. Given that I believe that the defense of individual legal rights and a desire to protect those least able to protect themselves in our society is a fundamental prerequisite for this job, I have grave concerns about her selecting Aetna as a place to work. Also, when the Committee fully explores the specifics of the interests of Aetna and GE to determine exactly what areas should be "off limits" for Ms. Baird, the role that remains may be narrow indeed.

For me, this candidate raises too many questions for me to support her at this time. Unless these difficult questions can be overcome, I recommend that Ms. Baird be rejected by this Committee.

Thank you for granting me this opportunity to testify before you. I am prepared to answer any questions the Committee may have.



Monday, Oct. 20, 1 PM
For immediate release
For information contact:
Bob Hunter or Jay Angoff,
(703) 549-8050

"TORT REFORM" A FRAUD, INSURERS ADMIT

Limiting compensation to injury victims will not reduce insurance rates, according to documents filed in Florida by two of the nation's largest insurance companies.

A document prepared by Aetna Life and Casualty, one of the nation's leading commercial liability insurers and a leader in the industry's nationwide "tort reform" effort, analyzes five specific limitations on liability that Aetna is currently lobbying for. It concludes that one limitation will reduce rates by a maximum of 4/10 of 1%, while all other limitations will have no effect on insurance rates.

Enacted in Florida this spring, the five limitations are:

(1) reducing compensation to injury victims by the amount of compensation from collateral sources;

(2) restricting the doctrine of joint and several liability;

(3) limiting compensation for paralysis, disfigurement and other types of non-economic damages to \$450,000;

(4) limiting punitive damages; and

(5) requiring periodic payments of future economic damages of more than \$250,000.

The Aetna document, a rate filing proposed to take effect January 1, 1987, explains why each of these provisions will have little or no effect on insurance rates.

Eliminating the collateral source rule, for example, will have a negligible effect on insurance rates because "current Aetna claim settlement practices recognize, in part, the existence of collateral sources as part of the negotiating process used in arriving at a mutually satisfactory damage value with the plaintiff." Restricting joint and several liability will not reduce insurance rates "due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to Aetna's insured, and the policy limits purchased." And limiting compensation for "non-economic" damages will not lower insurance costs, according to Aetna, "due to the impact of degree of disability on future losses, the impact of policy limits, and the actual settlement reached with the plaintiff."

Finally, Aetna concludes, limiting punitive damages will have "no impact" on Aetna's claim values, and requiring periodic payments of future economic damages over \$250,000 will yield "no net savings" because of the "interaction of policy limits, past economic losses, and future economic losses," the "settlement value of the case," and the "apparent implicit recognition of the periodic nature of future damages."

Aetna based its conclusions on an analysis of 105 claims it had recently closed. Aetna analyzed these claims by sending out a form "designed to gather data on the impact of tort reform" to its branch managers. Interestingly, this form asks for and has yielded data, like those on the effect of joint and several liability and non-economic damages, that insurers have consistently refused to disclose to the public or legislators.

The St. Paul Fire and Marine Insurance Company, the nation's largest medical malpractice insurer, conducted an analysis similar to Aetna's and reached similar conclusions. The St. Paul found that 4 of the 313 closed claims it analyzed would have been affected by the "tort reforms" enacted in Florida, "for a total effect of about 1% savings." The St. Paul further explained that the 1% savings estimate probably overstates the savings resulting from tort reform.

The Aetna and St. Paul analyses were filed in response to legislation enacted in Florida this spring which both limited liability and required insurers to reduce their rates unless they could demonstrate that the limitations on liability would not reduce their costs.

The documents were released by the National Insurance Consumer Organization and Ralph Nader at a Washington, D.C. press conference. NICO is a non-profit, non-partisan consumer organization that monitors the insurance industry. It was founded by J. Robert Hunter, former Federal Insurance Administrator under Presidents Ford and Carter, in 1980.

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Commercial Insurance Division

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August 8, 1986

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FORMS AND CONTRACTS

Honorable Bill Gunter
INSURANCE COMMISSIONER
Florida Department of Insurance
Tallahassee, FL 32301

ATTN: Mr. Charlie Gray, Chief
Bureau of Policy and Contract Review

Dear Mr. Gray:

RATE REVISION
CONTRACTORS LIABILITY POLICY PROGRAM
✓ THE AETNA CASUALTY AND SURETY COMPANY
THE STANDARD FIRE INSURANCE COMPANY
THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT

In accordance with your Insurance Laws, our Companies file a revised liability rate level which results in an overall selected premium increase of 17.2% with an annual premium effect of \$622,250.

Our Companies' decision to revise rates results only after a thorough and comprehensive analysis. We evaluated our experience, market conditions, tort reform, and other relevant factors as they affect the establishment of adequate rate levels. The enclosed exhibits prepared by actuarial unit are submitted in support of our rate filing decision, and demonstrate that the resultant rates are neither excessive, inadequate, nor unfairly discriminatory.

We propose to implement this filing with respect to all policies written on or after January 1, 1987. So as to not delay the filing of our rate level decision, revised rate pages will be forwarded under separate cover when available.

A stamped, self-addressed envelope is enclosed for your convenience in responding.

Sincerely,

Thomas L. Rudd, Superintendent
Insurance Department Affairs - Commercial Lines

BODILY INJURY CLAIM COST IMPACT OF FLORIDA TORT LAW CHANGE

Summary

The following table summarizes the expected impact of the new Florida law on bodily injury claims costs (including Allocated Loss Adjustment Expenses). The impacts shown were developed from data gathered via a special claim study conducted by the Aetna. The claim study and the analysis are detailed in the succeeding sections of this memorandum.

Impact of Tort Law ChangesImpact of Tort Law Changes

<u>Tort Law Change</u>	<u>Line of Business</u>	
	<u>Products</u> <u>Bodily Injury</u>	<u>All Other</u> <u>General Liability</u>
Collateral Source Offset	0	(0.4%)
Joint & Several	0	0
Limitation of Noneconomic Damages to \$450,000	0	0
Punitive Damages	0	0
Future Economic Damages over \$250,000 Paid at Present Value	0	0

All Other General Liability includes the bodily injury liability portion of package policies, SMP Section II, and monoline General Liability policies. The analysis as shown is based solely on Aetna data and, therefore, is applicable only to Aetna's book of business.

Claim Study

The attached special claim analysis form, designed to gather data on the impact of the tort reforms, was completed by experienced Branch Office claim personnel. Claims eligible for analysis were selected according to the following criteria:

1. Commercial Casualty claims (excluding National Accounts business) for policy years 1981 through 1985
 - a. reported prior to January 1, 1986
 - b. open as of May, 1986
 - c. closed during the last six months
2. All claims in category (1) with indemnity payments or reserves over \$25,000 were analyzed (total of 55 claims).
3. Fifty closed claims with indemnity of less than \$25,000 were randomly selected.

The completed forms were reviewed for internal consistency prior to coding and analysis.

Collateral Source Analysis

Exhibits I and II detail the analysis of the revision in the collateral source rules. Exhibit I is for claims over \$25,000 indemnity. Exhibit II is for claims under \$25,000 indemnity.

Exhibit I shows that since the right of subrogation exists for many collateral sources available to the plaintiff, the economic losses incurred are not expected to be substantially reduced due to the law change. Furthermore, current Aetna claim settlement practices recognize, in part, the existence of collateral sources as part of the negotiating process used in arriving at a mutually satisfactory damage value with the plaintiff.

Exhibit II shows that for claims under \$25,000, no additional savings are expected due to the change in Florida law.

Joint and Several Analysis

Exhibit III details the analysis of joint and several additional payments made by Aetna. Total joint and several payments were 4.5% of indemnity payments over \$25,000. A review of each claim generating additional payments due to joint and several liability indicated no reduction in those payment due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to Aetna's insured, and the policy limits purchased.

Analysis of Limitation of Noneconomic Damages to \$450,000

Nine claims had the potential for coming under the new limitation for noneconomic losses. The nine cases were identified on the basis of full liability value—not our insured's share of the liability. Data in the above format allowed for a review of whether total claim value could be reduced and whether such a reduction would impact on Aetna's incurred claim cost.

The review of the actual data submitted on these cases indicated no reduction of cost. This result is due to the impact of degree of disability on future losses, the impact of policy limits, and the actual settlement reached with the plaintiff; all seemed to reduce the expected noneconomic component of damages to less than \$450,000.

Analysis of Punitive Damages

Only two cases were found where punitive damages had an impact on the claim settlement value. The total impact was estimated at less than \$15,000 or less than 0.1% of total indemnity payments. Consequently, it appears that there will be no impact on Aetna's claim values due to changes in the allocation of the punitive damages awarded.

Analysis of Installment Payment of Future Economic Damages Over \$250,000

Ten claims had the potential for coming under this section of the law. The review of individual cases indicated no net savings to Aetna for the following reasons:

1. interaction of policy limits, past economic losses, and future economic losses
2. settlement value of the case
3. apparent implicit recognition of the periodic nature of future damages

Overall Summary

The expected net reduction in claim costs is based on an analysis of Aetna claims. As such, the analysis is applicable only to Aetna's book of business.

Due to the level of detail of the historical claim data, informed claim judgement was required in some instances to ascertain some of the detail required for the analysis. The judgement, if any, was exercised by experienced claim adjusters and is implicit in the analysis.

The analysis shown represents the best estimate of future cost reductions if the law as currently structured remains in effect. However, the sunset provision of the law takes effect in four years. Furthermore, the law applies only to cases filed under the law, and the Florida statute of limitations is four years. Consequently, it is possible that any plaintiff who might be severely impacted by the provisions of the law would delay filing until after the law expires. If this situation arises, then the expected reductions will be lower than those indicated in this memorandum.

Exhibit II shows that for claims under \$25,000, no additional savings are expected due to the change in Florida law.

Joint and Several Analysis

Exhibit III details the analysis of joint and several additional payments made by Aetna. Total joint and several payments were 4.5% of indemnity payments over \$25,000. A review of each claim generating additional payments due to joint and several liability indicated no reduction in those payment due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to Aetna's insured, and the policy limits purchased.

Analysis of Limitation of Noneconomic Damages to \$450,000

Nine claims had the potential for coming under the new limitation for noneconomic losses. The nine cases were identified on the basis of full liability value—not our insured's share of the liability. Data in the above format allowed for a review of whether total claim value could be reduced and whether such a reduction would impact on Aetna's incurred claim cost.

The review of the actual data submitted on these cases indicated no reduction of cost. This result is due to the impact of degree of disability on future losses, the impact of policy limits, and the actual settlement reached with the plaintiff; all seemed to reduce the expected noneconomic component of damages to less than \$450,000.

Analysis of Punitive Damages

Only two cases were found where punitive damages had an impact on the claim settlement value. The total impact was estimated at less than \$15,000 or less than 0.1% of total indemnity payments. Consequently, it appears that there will be no impact on Aetna's claim values due to changes in the allocation of the punitive damages awarded.

Analysis of Installment Payment of Future Economic Damages Over \$250,000

Ten claims had the potential for coming under this section of the law. The review of individual cases indicated no net savings to Aetna for the following reasons:

1. interaction of policy limits, past economic losses, and future economic losses
2. settlement value of the case
3. apparent implicit recognition of the periodic nature of future damages

Overall Summary

The expected net reduction in claim costs is based on an analysis of Aetna claims. As such, the analysis is applicable only to Aetna's book of business.

Due to the level of detail of the historical claim data, informed claim judgement was required in some instances to ascertain some of the detail required for the analysis. The judgement, if any, was exercised by experienced claim adjusters and is implicit in the analysis.

The analysis shown represents the best estimate of future cost reductions if the law as currently structured remains in effect. However, the sunset provision of the law takes effect in four years. Furthermore, the law applies only to cases filed under the law, and the Florida statute of limitations is four years. Consequently, it is possible that any plaintiff who might be severely impacted by the provisions of the law would delay filing until after the law expires. If this situation arises, then the expected reductions will be lower than those indicated in this memorandum.